UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

2015-1296

COLLECTORS UNIVERSE, INC.,

Plaintiff - Appellee,

PROFESSIONAL COIN GRADING SERVICE,

Counterclaim Defendant,

v.

DUANE C. BLAKE,

Defendant - Appellant

Appeal from the United States District Court for the Central District of California in Case No. 14-CV-00333, Judge Andrew J. Guilford

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OPENING BRIEF FOR DEFENDANT – APPELLANT

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June 29, 2015

CERTIFICATE OF INTEREST

Counsel for Appellant certifies the following:

1. The full name of every party or amicus represented by me is: Duane C. Blake.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: Duane C. Blake.

3. The parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public, of the party or amicus represented by me are: None.

4. The name of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

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I. STATEMENT OF RELATED CASES

Appellant is unaware of any other appeal in or from the same civil action or proceeding as this matter that was previously before this or any other appellate court.

However, Appellee Collectors Universe, Inc. ("Collectors") filed an *ex parte* reexamination request (control no. 90/013,320) against the '889 patent at the Patent and Trademark Office (PTO). A852. That reexamination involved some of the same prior art considered by the district court and at issue in this appeal. That reexamination proceeded simultaneously with the declaratory judgment action filed by Collectors in the United States District Court for the Central District of California, whose summary judgment is the subject of this appeal. A PTO reexamination panel confirmed all claims of the '889 patent without amendment on March 4, 2015 (A2259), and the reexamination certificate formally published on June 9, 2015. The same claims invalidated by the district court were, thus, contemporaneously confirmed by the PTO as patentable over some of the same prior art.

Another lawsuit between the same and other third parties occurred in the United States District Court for the District of Massachusetts in 2011. *See Blake v. Prof. Coin Grading Serv.*, 898 F. Supp. 2d 365 (D. Mass. 2012). Blake asserted claims of breach of contract, civil conspiracy, and theft of his business plans relating to the same technology described in the now-granted '889 patent at issue in this appeal. That case resulted in a dismissal under Fed. R. Civ. P. 12(b)(6) of Plaintiff Blake's claims against Collectors, and a jury verdict finding no verbal contract between Blake and the Numismatic Guaranty Corporation of America ("NGC"). No appeal was taken from those decisions.

Aside from the foregoing, there are no other cases known to Appellant pending in this or any other court that will directly affect or be directly affected by this Court's decision in the present appeal.

II. JURISDICTIONAL STATEMENT

Jurisdiction in the district court was based upon 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. This Court's jurisdiction is based on 28 U.S.C. § 1295(a)(1), this being an appeal from a decision of the district court having jurisdiction at least in part under 28 U.S.C. § 1338(a) and finally disposing of all claims and counterclaims made by the parties.

This appeal is timely under Fed. R. App. P. 4. Judgment (A2161-A2162) based on the district court's January 21, 2015 order of invalidity was entered by the district court on February 6, 2015, and a timely notice of appeal to this Court was filed on January 23, 2015.

III. STATEMENT OF THE ISSUES

1. Did the district court err in granting summary judgment of anticipation by "prior art" in general, without specifically identifying one item of prior art disclosing all of the claim limitations?

2. Did the district court err in granting summary judgment of obviousness without identifying a specific combination of prior art, without

explicating a rationale to combine the prior art, and without considering secondary indicia of nonobviousness?

3. Did the district court err in finding on summary judgment that the plus symbol ("+") in the "1976 Paramount Auction Catalog" prior art discloses a "fractional[] grad[e] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale," as recited in claim 1 of the '889 patent, when evidence of record shows that the Sheldon scale as used in Paramount used only the numbers 60, 65, and 70 rather than each of the integers in the range 60-70?

4. Did the district court err in finding on summary judgment that the star symbol ("★") used on the "NGC Star® Holder" prior art represents a "fractional[] grad[e] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale" when there was evidence that the ★ symbol does not a represent a "grade" at all?

IV. STATEMENT OF THE CASE AND FACTS

A. Appellant Duane Blake

Appellant Duane Blake ("Blake") is a life-long coin collector, Harvard-educated biologist, patent attorney, and independent inventor. A689, A1392-A1395. Blake is the sole inventor and owner of the '889 patent (A717-A733), the subject of this appeal.

B. Introduction to the field of the invention

Blake took a hiatus from coin collecting while raising a family, but his interest in coin collecting rekindled when he inherited a partial collection of Matte Proof Lincoln Cents from his late father William H. Blake. A1407-A1410. Wishing to complete that collection, Blake reentered the world of numismatics, this time more seriously. A1409. Blake completed this collection, and did so both honoring his father, and using the collection and other marketing materials as a prototype in developing his invention, which is a multi-element improvement of the existing practices in numismatics. Blake's plan was to generate interest in his invention so it might be licensed by the larger companies, like Collectors, and to protect unaware consumers who

lacked deep knowledge of numismatics. A1767, l. 20 - A1768, l. 5. Specifically, the claimed invention in this appeal developed from Blake's personal experiences, and because his late father had been victimized by the purchase of a purported valuable Matte Proof Lincoln coin, which was not actually genuine, as Blake discovered. A1407, l. 5 - A1410, l. 4. Based on this experience, and motivated by new insights into how the modern numismatic industry works (A737), Blake set out to address a widely-known numismatic problem referred to as "coin doctoring," or the manipulation of a coin's surfaces to make the coin appear more valuable to end user purchasers of "slabbed" coins, and thus to deceive the purchaser as to the value of the purchase. A700, ¶ 71; A718, abstract; A728, col. 8, ll. 56-67; A729, col. 10, ll. 1-6; and A731, col. 13, ll. 65-67, col. 12, ll. 1-5.

C. The '889 patent

Appellant Blake is the sole inventor and owner of the '889 patent, filed on July 14, 2010, with priority based on a provisional application filed on July 16, 2009. A718. The '889 patent contains five claims: independent claim 1 to a collectable coin display method, and dependent method claims 2-5. Claim 4 is

dependent from claim 1 and is a "product-by-process." claim. A732. The claims generally recite methods of displaying collectable coin grading and authentication certificates as well as holders associated with the claimed display methods of using labels to display characteristics of the coin through the use of the claimed "indicators."

The grading label may display an indication that a coin has been fractionally graded or may simultaneously display historical information about the coin that has been graded, and has been inserted inside of the plastic holder.

The '889 patent specifically recites claims to collectable coin display methods (asserted claims 1 and 3) and the related coin holder (asserted claim 4), which contains a collectable coin and related certificate, known in the numismatic industry as grading "labels." A718. The labels are displayed as they are inserted into a plastic coin holder, which is often called a "slab" (A725, Col. 2, l. 39, 57), such that the coin's various indicator(s) may be displayed within the holder, and the coin's image is stored in a database and monitored as necessary to ensure that coin doctoring has not been employed, as the label may simultaneously indicate that the coin has been digitally imaged. The value

of the coins prepared and displayed in this manner is thereby increased, as coin doctoring is discouraged by the label indicators. A283. The claimed invention is thus a combination of some known elements in the modern numismatic and digital arts – a graded coin, a plastic slab, and a label certificate that represents the coin's grade, as well as a digital image. A729, col. 9, ll. 24-67. As described in column 9 of the patent, the patent helps define the indicators as they may represent how an "above-average" coin may be indicated with a "+" symbol (see Figure 2A, below (A721)) and how a "below-average" condition coin may be indicated with a minus "-" symbol (see Figure 2E, below (A723)). These Figures 2A and 2E, together with Figure 2C (A722), in total, represent an example of a fractional grading scale, as recited in claim 1, part (a)(i), which reads, "having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." A732, col. 16, ll. 4-6. This claim language is further clarified in claim 1, part (c), which further defines the label: "introducing and displaying said coin label . . . said label displaying at least one eye appeal-related information indicator associated with said uncirculated coin . . . said indicator further correlating to a precise above-

average fractional grade condition of said coin." A732, col. 16, ll. 13-24. Figures 2A and 2E of the '889 patent are illustrated just below:

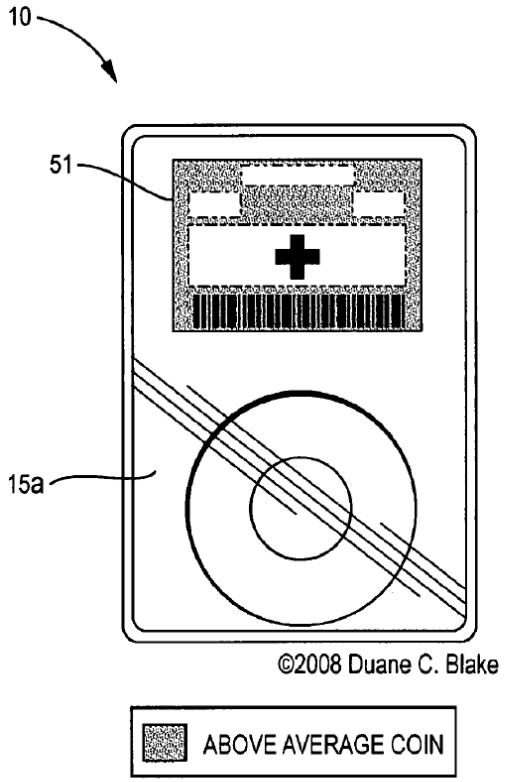

FIG. 2A

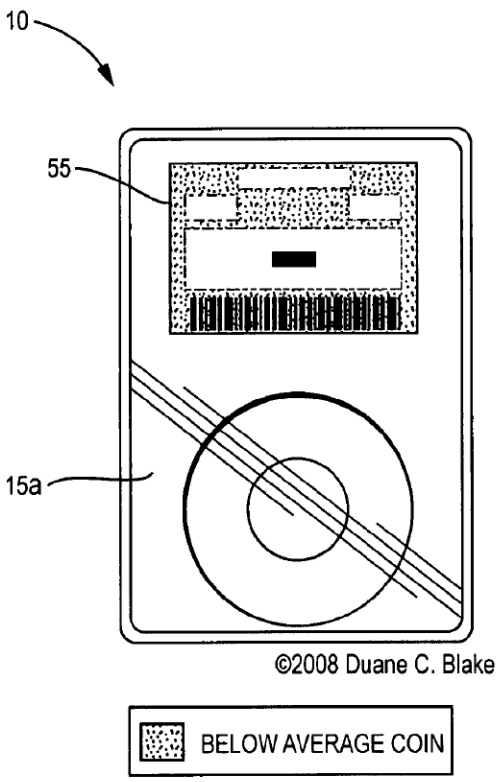

FIG. 2E

A721; A723.

As the '889 patent further teaches, and illustrated by these drawings, the labels allow for different colors to be used on the labels, as represented by way of example by the shaded keys located below the figures. A729, col. 9, ll. 24-55. This teaching of colored labels being used in conjunction with QWERTY symbols, like the + and – symbols, allows the '889 patent to improve upon the

amount of information indicated by the small labels, as exemplified by a description of a prior art patent application described in the '889 patent's "Background of the Invention." A725 col. 2, l. 56 - A726, col. 3, l. 7.

As to claim 1, part (a)(ii), adds another limitation: "ii) said coin **having been further digitally imaged**, whereby said digital coin image file is electronically stored in a database **for future comparative assessment with a second digital coin image file** of said coin created at a later date." A732, col. 16, ll. 6-10 (emphasis added). The '889 patent teaches a number of ways that this claimed function may be practiced, and the claim is not limited by the specification to any one embodiment. *See, e.g.,* A731, Col. 14, ll. 27-50.

For purposes of this appeal, the entire claim 1 of the '889 patent reads as follows, and the language most relevant for this appeal is bolded:

> 1. A coin value preservation and safeguard holder display method adapted to increase coin grading precision within the conventional Sheldon coin grading standard and further safeguard the condition of an uncirculated coin through the introduction and display of one or more **eye appeal-related information indicators**, comprising:
>
> a) providing an uncirculated coin, said coin

> i) having been **fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale**; and
>
> ii) said coin having been further **digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment with a second digital coin image file** of said coin created at a later date;
>
> b) including a standard clear plastic coin holder display device capable of displaying a coin label in proximity to said related uncirculated coin; and
>
> **c) introducing and displaying** said coin label, said label being internally-affixed within said coin holder display device and further capable of displaying **at least one eye appeal-related information indicator** associated with said uncirculated coin, whereas said at least one eye appeal-related information indicator comprises a plus ("+") symbol printed on said label defined within said display device, said + symbol adjoining the coin's Sheldon whole number grade on said label, and further being located on said label in proximity to said coin such that the indicator is openly displayed, **said indicator further correlating to a precise above-average fractional grade condition** of said coin.

A4; A732, col. 15, l. 55 – col. 16, l. 24 (emphases added).

Thus, in the present case, the '889 patent relates to methods of using labels to display indications that a coin has been fractionally graded and may simultaneously display a fractional grade and other historical information about

the coin inside of the plastic holder. For example, a colored label may indicate that the coin in the holder has been digitally imaged, and that coin's digital image has been stored in a database where it may be compared to secondary temporal images of the coin as necessary to determine whether the coin has been tampered with or manipulated. Hence, the label displays information such as relative eye appeal, or grading history, to a viewer of the holder, and that coin's value is thus increased by the use of the indicators. A718 ('889 patent abstract). Thus, it is the display of the pre-slab grade and preparation **information** itself – not the manner in which the coin was graded – that is at the emphasis of the claimed invention. A47, ll. 20-27, A640-A641, A2109, ¶¶ 30, 31, A1094. The purpose of this distinction was intended by the inventor to create uniformity in the industry despite differences in grading scale interpretations used by individuals and grading companies. The uniformity can be now seen being practiced as the + symbol is being displayed on both PCGS' and their competitor NGC's holders. A726, Col. 3, ll. 34-38 and 54-60.

Coin labels have *historically* (since PCGS started the practice in 1986, but not in 1976) indicated (or displayed) the coin's "Sheldon scale" numerical grade

to the collector or end-user, and the industry holder/labeling system since 1986 was set to present slabbed coins as graded on a numerical whole number incremental scale from 1-70, with 1 representing the low end, or poor grade condition of the coin, and 70 reflecting the high end, or perfect grade condition of the slabbed coin. A725, col. 1, ll. 34-41. A coin that was judged to have no "wear" on its surfaces, was deemed to be an "uncirculated" or "mint state" ("MS") coin, and the coin's condition would be reflected on a label as "MS," followed by using a Sheldon scale whole number that was designated between 60-70 on the scale (*i.e.*, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, or 70). A725, col. 6, ll. 18-20. Thus, the 1-70 and 60-70 whole number system was used after 1986 (but not in 1976) based on judging a coin's condition (by expert graders), and based on the coin's condition, giving the coin a "whole number" grade, while displaying that numerical grade on the label. A725, col. 2, ll. 18-23.

This "whole number" grading system caused problems, as it allowed end users (collectors or investors) to manipulate the system because of the variations in the 'low' and 'high' end conditions of coins within the one point whole number. The end user speculator could remove, or "crack out" a coin from the

plastic slab, throw away the grading label, and resubmit that coin to the grading company in the hopes of receiving a higher one-point numerical grade. Cracked-out coins became "unslabbed" at that point (once more ungraded, outside of a holder and 'raw'). As the coin's condition and its "eye-appeal" are inter-related concepts related to the coin's grade and market value, it was not unusual for an unscrupulous person in possession of the coin to manipulate the coin's surface structure by using chemical, thermal or mechanical methods on the metal surface in an attempt to increase the "eye appeal" or overall look of the coin. A731, col. 13-14, ll., 65-68, 1-5. In this way, a re-submission/re-grade and re-slabbing of the coin might generate a higher grade for the submitter, and thus, increased value of the coin based on that higher grade. This described manipulation of a coin is known in numismatics as "coin doctoring." A728-A729, cols. 8-9, ll. 56-67, 1-5; A732, col. 15, ll. 9-22. Coin doctoring, when committed with the intent to defraud third party coin purchasers, is a federal crime. *Blake v. Prof. Coin Grading Serv.,* 898 F.Supp.2d at 396, n.7.

Coin doctoring often has the end effect of ruining the valuable collectible, as the chemicals may continue to react with the coin surface after

the coin is slabbed (this is known as the coin "turning in the holder"). So coin doctoring can defraud collectors as to actual grade and also artificially inflate the grading company records of previously-graded coins (the coin grading company records are known as "population reports"). These records are relied upon as reflecting an accurate account of the objective rarity of a particular coin series. For one hypothetical example, if a 1909 Lincoln Cent were submitted to the grading company over and over, perhaps 40 times, each time being re-graded and re-slabbed, returned to the collector, cracked out again, re-submitted, re-graded, returned to the collector, etc., the population for that coin would show a population of graded coins for 1909 Lincoln Cents at "40." Yet in reality, only one coin actually exists. Because coin value relates to coin condition and, and condition controls rarity (A725, col. 1, ll. 64-66), this coin would skew the condition population reports, and wrongly reflect the coin's 'conditional' rarity, and thus the value associated with that type of coin. Further, if the coin submitter (crack-out speculator) finally received an "upgrade" on the coin's condition as a result of the re-submissions (*e.g.*, from a MS "65" to "66" whole number grade), then the population reports would show 40 mint state "65"s, and 1 mint state "66." Thus, this mint state 66 would be

wrongly considered a "rare" and more valuable coin. Thus, the very same coin could increase in value exponentially based on a one-point jump in grade, even though that rarity and value is a falsehood. Because of these systemic problems, the coin doctors speculated, and were highly incentivized to manipulate and re-submit the previously-graded coin, in order to perhaps receive a better "one-point" grade increase and increase profits. This labeling system, which was implemented by PCGS (the grading arm of Collectors) in 1986 (A725, col. 1, ll. 54-58), had no checks in its grading system in place to accurately understand which coins that had been previously graded, and to raise an alert if repetitive submissions were "doctored" or even "cracked out." And the "whole number" system could not account for the slight variations between coins graded in the same Sheldon whole number. A725, col. 2, ll. 18-22. So, these problems and many others developed and persisted in the numismatic industry, and Collectors, who profited from each re-grade, did very little to stop these serious problems. In one attempt to solve the industry coin doctoring problem, Collectors brought a federal lawsuit specifically directed at alleged known and unknown coin doctors, but, ultimately, that lawsuit was dismissed. *See*

Collectors Universe, Inc., v. Rossman, No. 10-03602-SJO (C.D. Cal. May 27, 2010).

As mentioned, Blake's solution to these problems began when his own family was victimized by a transaction in numismatics where a purchased coin was not what it had been purported to be, and as an independent inventor and coin collector himself, claimed his invention in the '889 patent as he had first fully described the claimed invention in 2008. A1364, A1602. The claimed invention is a combination of limitations that work together to alleviate the aforementioned problems and to increase the inherent value of a collectable coin by creating checks in the grading system based on the labeling certificates that de-incentivize the "crack-out" speculators and coin doctors, and create more market certainty. A732, col. 15, ll. 38-43.

Blake testified that he first recorded the creation of his claimed invention recited in the '889 patent claims on February 18, 2008, with the scanning of a coin image and the +/- labeling system embodied on the label. A1602; A1607, ¶ 2; A1611-12, ¶¶ 7-8; A1841. Blake filed a provisional patent application on July 16, 2009, and a non-provisional patent application on July 14, 2010. The PTO

allowed the application after explicitly considering over 90 items of prior art (A472-A491), including the prior art referred to in this appeal as the "NGC Star® Holder" prior art, and Collectors' own "PCGS Secure® + system and related holder ("Secure +"). A481, ¶¶ 1, 2 and 5. As explained in more detail below, Blake alleged before the district court that Collectors' Secure® + system and related Secure® + holder infringe the '889 patent, claims 1, 3 and 4. In fact, the NGC Star and Secure® + system references as also listed in the "Prior Art – Other Publications" section of the '889 patent, and also the summary of the NGC Star® Holder prior art is described in the background section of the '889 patent. A718-A719; A725, col. 2, ll. 24-27.

When the PTO allowed the '889 patent, the Examiner noted in the Notice of Allowance, Statement of Reasons, "The cited prior art does not anticipate nor render obvious providing an uncirculated coin) said coin i) having been **fractionally graded within one whole number** in the numerical 60-70 range within the conventional Sheldon whole number scale." A399 (emphasis added).

Blake filed comments to this Examiner's Statement of Reasons for allowance, stating, *inter alia*, that the "claims patentably define over the cited art, **for at least the reasons** discussed by the Examiner's comments, as well as the reasons given in Applicants' amendments and remarks . . ." and "**that there may be additional reasons for allowance** that have not been specifically cited, and which may apply to several of the allowed claims, **in addition to or instead of the cited reasons**." A374, ¶ 2 (emphases added).

D. The appellee and defendants

Appellee Collectors is a publicly traded collectables grading and authentication company. Counterclaim defendant Professional Coin Grading Service ("PCGS") is the coin-grading division of Collectors. Because Collectors and PCGS legally merged in 2008, they are in fact the same company (A692, ¶ 6) and will be referred to collectively for this appeal as "Collectors." A690, ¶¶ 4-5; A25, ¶ 5-6; A689-A690. PCGS was started in 1986 by among other founders, David Hall, a coin dealer, and witness in the district court lawsuit. Collectors Universe, Inc. was founded in 1999 by Mr. Hall and others as a Delaware corporation. A25, ¶ 5, A689, ¶ 2. Mr. Hall is now the President and

Director of Collectors. Mr. Hall also sells only PCGS-graded and labeled coins through his private company, David Hall Rare Coins, Inc. ("DHRC"). A691, ¶ 11, 13, A692, ¶ 21. A691, ¶ 11.

E. Related litigation

Blake approached David Hall (A2113, ¶ 45) and PCGS President Donald Willis with his ideas in December, 2008 (A1614, ¶ 14), informing David Hall of his intent to file a patent application, and hoping to interest Collectors in a licensing and invention testing arrangement. Blake thereafter provided a published copy of a promotional article to Collectors' PCGS grading personnel in early 2009. Blake's article was included in a book that was distributed by author Kevin Flynn, entitled *Lincoln Cent Matte Proofs*, published by Kyle Vick Press (First Ed. 2009), Pages 33-35. A1528, ll. 20-25. Blake's publication was further disclosed and considered by the PTO and cited on the face of the '889 patent. A491; A719; A1767, l. 20 – A1767, 1. 5.

Blake had hoped that being a large independent grading service, Collectors might have worked with him to market-test his invention, and offered Collectors a license if the (eventually) patented improvement proved to

be acceptable to the numismatic community, and therefore of commercial value for all parties. Collectors elected not to work with Blake, and Blake testified about the treatment he received as being "run over" by Collectors. A1768, ll. 1-2.

On August 31, 2011, which was before the '889 patent issued but during the pendency of its application at the PTO, Blake sued Collectors and Collectors' independent third-party grading rival, Numismatic Guaranty Corporation of America ("NGC") (the owner of the "NGC Star® Holder" prior art at issue in this appeal), in the United States District Court for the District of Massachusetts. A25. The Massachusetts suit was based on multiple theories but primarily breach of verbal contract as between Blake and NGC, and civil conspiracy by NGC and Collectors working together to convert Blake's invention marketing plans to commercialize the technology claimed in the later '889 patent. Because the case concluded before the '889 patent issued, a claim of infringement of the '889 patent was not – and could not have been – asserted at any time during the Massachusetts Case. The Massachusetts case went to a jury and resulted in a verdict in favor of NGC that no verbal contract had been

formed, and Collectors had earlier won a motion under Fed. R. Civ. P. 12(b)(6) (failure to state a claim) to dismiss all substantive claims because certain elements had not been properly alleged in the complaint. A25, ¶ 8. *See Blake v. Prof. Coin Grading Serv.*, 898 F. Supp. 2d at 365.

On March 4, 2014, on the day the '889 patent issued, Collectors filed its declaratory judgment complaint against Blake in the United States District Court for the Central District of California. A24. NGC also filed a nearly identical declaratory judgment complaint against Blake and his '889 patent on March 5, 2014, in the United States District Court for the Middle District of Florida. A319. Soon thereafter, on April 23, 2014, Blake and NGC settled the Florida dispute. A1387; A1626, ll. 8-25. *See Numismatic Guaranty Corp. of Am. v. Blake*, No. 8:14-cv-00541-EAK-MAP (M.D. Fl. 2014).

F. Proceedings in the district court

1. In general

Through its declaratory judgment complaint, Collectors asked for declarations of invalidity and non-infringement of their Secure® + coin service and related coin holders (A33), and additionally unenforceability due to

inequitable conduct (A32-A33). Collectors did not pursue the inequitable conduct in summary judgment.

On October 14, 2014, Blake filed counterclaims against Collectors, asserting both direct and induced patent infringement of claims 1, 3 and 4 of the '889 patent due to Collectors' making, using and selling their Secure® + service and coin holders to third party coin collectors. A671-A715; A735 (photograph of Collectors' Secure® + holder); A737 (diagram illustrating the flow of Secure® + holder sales to end users).

Collectors answered Blake's counterclaims on October 28, 2014. A738-A753. Collectors alleged that their Secure® + system and related holder had been invented before Blake's invention, but Collectors declined to produce any evidence of their invention when requested by Blake. A2114.

2. Claim construction at the district court

The district court's December 1, 2014 *Markman* opinion (A855-A867) did not construe several claim terms and phrases, for which the parties agreed to have their "plain and ordinary" meanings. A646-A656, A875. Those terms and phrases included "fractionally graded" and "plus ('+') symbol." A875. The

application of the meanings of those phrases to the prior art in this case is at issue in this appeal.

3. The prior art at the district court

a. The accused Secure® + service/holder as alleged prior art

The principal thrust of Collectors' motion for summary judgment of invalidity was focused on trying to establish that the accused Secure® + product and related service pre-dated the '889 patent and thus could not infringe. An example of the accused PCGS Secure® + service/holder as alleged prior art can be seen at A735. The PCGS Secure® + service/holder are also described in U.S. Patent Publ. No US 2011/10238589 to Don Willis, President of PCGS and listed inventor, filed March 25, 2010. A719, p. 2, "References cited", last reference.

b. The 1976 Paramount Auction Catalog

The 1976 Paramount Auction Catalog (A958-65) is a sales brochure listing coins for sale at an auction in 1976. The booklet contains non-digital images, descriptions, and prices of coins for sale by the Paramount International Coin Corporation in November 1976. Some of the raw coins (non-slabbed) listed for sale are described using a Sheldon number grade followed by the +

symbol. The + symbol in 1976 was not intended as a sub-grade, but a coin dealer tool to increase the auction value of the coin. An example of this is the following excerpt of the catalog showing a coin graded as "MS-65+":

1863, MS-65+. Another excellent combination of outstanding quality and unquestionable rarity at a price just slightly above that of the most common dates! We have observed the

A8, A964.

The 1976 Paramount Auction Catalog uses only the numbers 60, 65, and 70 for uncirculated coins, as was then typically done. According to the catalog, "[i]ntermediate numbers are *not* used" (emphasis in original):

OLD Descriptive Grade	NEW Quantitative Grade
Poor	Poor-1
Fair	Fair-2
About Good	AG-3
Good	Good-4
Good-Very Good	Good-6
Very Good	VG-8
Very Good-Fine	VG-10
Fine	Fine-12
Fine-Very Fine	Fine-15
Very Fine	VF-20

OLD Descriptive Grade	NEW Quantitative Grade
Choice Very Fine	VF-25
Very Fine-Extremely Fine	VF-30
Extremely Fine	EF-40
Extremely Fine-About Uncirculated	EF-45
About Uncirculated	AU-50
About Uncirculated-Uncirculated	AU-55
(Brilliant) Uncirculated	MS-60
Choice (Brilliant) Uncirculated	MS-65
Gem Uncirculated (Perfect)	MS-70

Intermediate numbers are *not* used. However, on occasion a (+) is used to designate that a given coin is somewhat better than the listed quantitative grade, but not good enough to qualify for the next highest one.

A961; *see also* A54 n.3 (Plaintiff's claim construction brief quoting the same).

c. The NCG Star® Holder

The NCG Star® Holder is a plastic holder for a collectable coin. This holder is manufactured by Numismatic Guaranty Corporation of America, one of the two major coin grading companies, along with Collectors' PCGS. This holder may utilize a ★ symbol, as exemplified by the following image of the front of an NGC Star® Holder for a coin that has been marked as "MS 68★":

A7, A946. According to NGC, the ★ symbol represents "Exceptional Eye Appeal":

> The ★ designation is used to identify a coin that, in the opinion of NGC's grading team, displays superior eye appeal within that grade (not a higher grade than one without a ★). Please don't construe these designations as new grades or grades within grades. They're not. . . .

A2037 (emphasis added).

4. Summary judgment

Collectors retained new counsel who entered an appearance just prior to the *Markman* hearing on December 1, 2014. Consequently, Blake only received the first production of requested prior art documents, including the 1976 Paramount Auction Catalog, from that new law firm in the first week of December 2014. At that time, Collectors had not disclosed any 35 U.S.C. § 102(g) theories to Blake, as was mandated by the district courts' Standing Patent Rule 2.5.1.

Collectors' invalidity motion, filed December 15, 2014, argued primarily that their accused infringing Secure® + service and holder, which became available March 25, 2010, pre-dated the July 14, 2010 filing date of the '889 patent, notwithstanding the fact that the '889 patent claimed priority to a provisional patent application filed on July 16, 2009. A866-A889, A890. Collectors argued to the district court that "[w]hile PCGS disputes that its Secure Plus service and Secure Plus holders infringe the '889 patent, if the Court believes that there is infringement, then the Secure Plus service and holders anticipates Claims 1, 3 and 4 of the '889 patent and the Court should

hold that the '889 Patent is invalid." A895, ll. 1-7. In fact, Collectors admitted in their pleadings that the Secure® + service has the same elements as those in claim 1 of the '889 patent. A26, ¶ 9; A745, ¶ 78.

Collectors also argued invalidity based on the NGC Star® Holder (A879) but did so only "assuming *arguendo*" that its § 102(g) argument based on prior invention of its Secure® + product failed. A894, l. 20 - A895, l. 28. Collector's summary judgment motion mentioned the 1976 Paramount Auction Catalog only briefly as a teaching of the use of the + symbol in the prior art. A878.

Blake, for his part, also requested that the district court issue summary judgment in his favor on validity, *sua sponte*, in his opposition papers. A1356-A1357. Blake also filed a motion for direct infringement of claims 1 and 3 of the '889 patent, by the use of the Secure® + service, and for infringement of claim 4 of the '889 patent, through the making, using and selling of the Secure® + holder. A1043-A1077. Blake included his claim analysis in his direct infringement motion. A1040-A1090.

After the parties filed their respective motions on December 15, 2014, Blake was deposed four days later on Friday, December 19, 2014, which was after the discovery period had ended on December 15.

Blake attempted in oral argument to explain to the district court the crazy whirlwind of events in December 2014 and Collectors' shifts in their theories of invalidity, but he was not afforded relief. A16-A17. Blake traveled to California to address the district court's concerns it had previously stated in a tentative opinion, but the hearing lasted only 13 minutes before the district court had to turn its attention to many other cases on its docket that day. A12-A23. At one point during Blake's attempts to explain the circumstances leading up to the summary judgment hearing, the district court said to him, "I've got, you know, five more cases." A17, l. 15.

G. Parallel reexamination of the '889 patent

At the same time as the summary judgment was proceeding, Collectors' *ex parte* reexamination request (A782-A852) of the '889 patent claims was also proceeding simultaneously. The reexamination request relied on a combination of prior art, including the 1976 Paramount Auction Catalog – not alone but in

combination with three other pieces of prior art. However, the reexamination panel decided to use only one other reference, which was the only one that could actually be established as "prior art" – a PCGS grading reference from a website dated in 1999.

The PTO eventually granted the reexamination request as having raised a substantial new question of patentability but then never adopted the many proposed rejections requested by Collectors. And while Collectors told the PTO in this request that they wished to expedite the reexamination so they could ask the district court for a stay of the lawsuit pending the PTO's decision (A786, ¶ 1), in fact, Collectors did not request a stay, but just days later, entered appearances of the new law firm (A853-A854) to conduct the December 1, 2014 claim construction hearing (A855-A867) and summary judgment proceedings.

After the summary judgment proceedings, instead of adopting Collectors' proposed rejections of the claims, the PTO's first action after ordering reexamination was to issue a notice of allowance confirming the patentability of all claims without any amendment from Blake on March 4, 2015. A2259. The PTO examination panel stated in its publicly available notice of intent to

issue a reexamination certificate ("NIRC") for the '889 patent claims 1-5:

> Furthermore, the combination identified as raising a substantial new question of patentability in the Order – Rare [1976 Paramount Auction Catalog], Graded and the Admitted Prior Art - fail to **teach a number of limitations** of claim 1. Most importantly, the prior art does not teach a coin "**fractionally graded within one whole number** in the numerical 60-70 range.

A2257, last paragraph (emphasis added). The reexamination certificate issued on June 9, 2015, as a matter of public record, confirming the patentability of all claims of the '889 patent without amendment, stating, "AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT: The patentability of claims 1-5 is confirmed." Addendum A, attached hereto.

V. SUMMARY OF ARGUMENT

The diametric difference between the validity/invalidity decisions of the PTO and the district court regarding the '889 patent claims is a simple consequence of the fact that the district court conducted an improper validity analysis. In the strict confines of a reexamination before three patentability experts in this field, Collectors was constrained to present a structured invalidity case within the accepted framework of the law. The PTO

immediately recognized that that invalidity case was deficient. The district court, however, performed neither a complete anticipation analysis nor a complete obviousness analysis but instead seemed to conflate 35 U.S.C. § 102 and 35 U.S.C. § 103. That legal error, coupled with possible implicit interpretation errors regarding the plain and ordinary meaning of "fractional grade," and misunderstandings of the content of the prior art resulted in an erroneous decision far afield from this Court's precedent.

In this case, even a cursory reading of the district court's decision makes clear that neither the 1976 Paramount Auction Catalog, the NGC Star® Holder, nor any of the other prior art that the district court considered in its multi-reference anticipation analysis either expressly or inherently discloses each and every limitation as set forth in the asserted claims 1, 3 or 4 of the '889 patent. As a consequence, the district court's summary judgment as to invalidity by anticipation was improper. Therefore, this Court should reverse the district court's summary judgment of invalidity of the '889 patent claims under 35 U.S.C. § 102.

The district court's analysis and conclusions under 35 U.S.C. § 103 are also flawed. While the district court considered multiple items of prior art with respect to the various claim limitations, the court never set forth a particular combination of prior art teachings or a modification of any specific prior art reference. In other words, the district court never combined or modified the prior art to match the claimed invention. Instead, the district court considered each claim limitation in isolation, as compared to the prior art, but never "put the prior art pieces together." Perforce, without any combination to focus a proper obviousness analysis, the court never articulated any rationale, such as a teaching, suggestion or motivation, or otherwise, to justify why a combination of the prior art references together would have been legally obvious under 35 U.S.C. § 103. Thus, the district court never established a *prima facie* obviousness case. Indeed, the court never even came close to a *prima facie* case, as the framework for a proper obviousness analysis was lacking from the start. To amplify these mistakes, the district court failed to consider strong evidence in the record of objective indicia of non-obviousness and the related nexus between that evidence and the claimed invention. That *per se* was reversible legal error, even if the district court had created a legitimate *prima facie* case of

obviousness by identifying a specific combination or prior art teachings and supported the obviousness of that combination with some articulated rationale. Instead, the district court's summary judgment of obviousness was nothing more than a conclusory, hindsight-tainted decision that should be reversed for multiple reasons.

Furthermore, when the district court did make findings as to the teachings of the 1976 Paramount Auction Catalog and NGC Star® Holder references, critical findings were erroneous. First, the 1976 Paramount Auction Catalog does not teach claim limitation 1(a)(i), which states, "providing an uncirculated coin . . . having been *fractionally graded within one whole number* in the numerical 60-70 range within the conventional Sheldon whole number scale." The district court assumed that the + symbol in "MS-65+" in the 1976 Paramount Auction Catalog was a "fractional[] grade[] within one whole number." That was factually incorrect as evidenced by the actual document. The Sheldon scale used in the 1976 Paramount Auction Catalog had gaps of unused numbers. For example, the numbers 66, 67, 68, and 69 were not used. That is stated unequivocally in the 1976 Paramount Auction Catalog itself.

Thus, the + symbol in an "MS-65+" grade in the 1976 Paramount Auction Catalog denoted an intermediate grade between 65 and 70, not a fractional grade between 65 and 66, *i.e.*, not a "fractional[] grade[] within one whole number." The PTO understood that key fact when it issued the '889 patent claims originally, and confirmed them again over prior art including the 1976 Paramount Auction Catalog in the reexamination, but the district court did not. As such, the 1976 Paramount Auction Catalog does not teach the one claim limitation for which the district court seemed to rely on the 1976 Paramount Auction Catalog, and summary judgment based in any way on the 1976 Paramount Auction Catalog was improper.

Second, the district court erroneously overlooked clear evidence that the ★ symbol on the NGC Star® Holder does not represent a coin's "grad[e]," at all, as the district court assumed, but instead purely a designation of eye appeal in a general sense. Not only did Blake testify as such and the '889 patent state this clearly in the Background section, but NGC itself – the owner of this prior art – said so. In fact, so did Collectors. And, again, the PTO understood that clear fact when it granted the '889 patent over NGC Star® Holder and other prior

art. The district court's finding to the contrary was certainly erroneous on summary judgment. In fact, the evidence is so overwhelming in Blake's favor that the district court should have granted summary judgment in Blake's favor on this point.

VI. ARGUMENT

A. Standard of Review

This Court reviews summary judgment decisions under regional circuit law. *Lexion Med., LLC v. Northgate Techs., Inc.*, 641 F.3d 1352, 1358 (Fed. Cir. 2011). The Ninth Circuit reviews the grant of summary judgment *de novo*. *Greater Yellowstone Coalition v. Lewis*, 628 F.3d 1143, 1148 (9th Cir. 2010).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Thus, summary judgment may be granted when only no "reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether there is a genuine issue of material

fact, the evidence must be viewed "in the light most favorable to the nonmoving party." *Whitman v. Mineta*, 541 F.3d 929, 931 (9th Cir. 2008); *accord Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1307 (Fed. Cir. 1998). At the summary judgment stage, a court must credit all of the nonmovant's evidence and draw all justifiable inferences in its favor. *Anderson*, 477 U.S. at 255. Also, under Ninth Circuit law, when reviewing a summary judgment decision, this Court must determine whether there are any genuine issues of material fact **and** whether the district court correctly applied the relevant substantive law. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir.2001) (en banc).

Furthermore, in deciding whether summary judgment is warranted, the court "must view the evidence presented through the prism of the substantive evidentiary burden" that would inhere at trial. *Anderson*, 477 U.S. at 255. Whether the subject matter of a patent claim is anticipated by a prior art reference under 35 U.S.C. § 102 is a question of fact. *Beckson Marine, Inc. v. NFM, Inc.*, 292 F.3d 718, 723-23 (Fed. Cir. 2002). Whether the subject matter of a claim is obvious under 35 U.S.C. § 103 is a question of law based on

underlying facts. *Id.* Because a patent is presumed valid under 35 U.S.C. § 282, the evidentiary burden to show facts supporting a conclusion of invalidity is clear and convincing evidence. *Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242 (2011). The express language of 35 U.S.C. § 282 also places the burden of establishing invalidity of a patent claim on the party asserting invalidity. *See, e.g., id.; Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2130 n.10 (2014). Each claim is presumed valid independently of the validity of other claims. 35 U.S.C. 282; *see, e.g., Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282 (Fed. Cir. 2009) (discussing product-by-process claims).

A district court's claim construction is a question of law. When the claim construction is not based on any extrinsic evidence, then this Court reviews the district court's construction *de novo*. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, No. 13-854, slip op. at 11-12 (Jan. 20, 2015).

B. The district court erred in granting summary judgment of anticipation by "prior art" in general, without specifically identifying one item of prior art disclosing all claim limitations.

It is a bedrock principle of patent law that a "claim is anticipated only if each and every element set forth in the claim is found, either expressly or

inherently described, in a **single** prior art reference." *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (emphasis added). This Court has noted that uncontroversial proposition many times. For example, this court has explained that anticipation under 35 U.S.C. § 102 requires that "[t]he invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a **single** prior reference, arranged as in the claim." *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001) (emphasis added); *see also, e.g., Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894 (Fed. Cir. 1984) ("[T]here is no anticipation unless all of the same [claim] elements are found in exactly the same situation and united in the same way . . . in a **single** prior art reference." (citations and quotations omitted) (ellipsis in original) (emphasis added)).

The district court, however, lost sight of that principle and compared different parts of claim 1 to different prior art references, seemingly under the ambit of anticipation. That was error. Specifically, the district court found that two different pieces of prior art – (1) the NGC Star® Holder (A946-48) and (2)

the 1976 Paramount Auction Catalog (A958-65) – each disclose claim limitation 1(a)(i), which the district court truncated as "providing an uncirculated coin . . . having been fractionally graded." A7-8. As explained in §§ IV-C and IV-D *infra*, those finding are incorrect. Just as importantly, the district court did not determine whether either of those prior art references discloses all other claim limitations. Instead, the district court turned to other prior art references when analyzing subsequent claim limitations.

Next, the district court found that claim limitation 1(a)(ii), which refers to "digital[] imag[ing] of the coin," "was anticipated by prior art," without specifically identifying that "prior art." A9. Although this reference to "prior art" is not perfectly clear, it appears that the district court had in mind some prior art in the form of Collectors' own products. Citing to the declaration of David Hall (A1292-97), Collectors' principal, the district court said, "Plaintiff [Collectors] provided undisputed evidence that **its** coins have been . . . digitally imaged since at least 2005." *Id.* (emphasis added). Notably, Collectors' coins are not the same prior art as the NGC Star® Holder or the 1976 Paramount Auction Catalog, and it was legal error for the district court to premise a finding

of anticipation on both Collectors' coins and either the NGC Star® Holder or the 1976 Paramount Auction Catalog.

Compounding this error, the district court next turned to claim limitation 1(b), which refers to "a standard clear plastic coin holder device . . .," and again determined that unspecified "prior art anticipated this element." A9. Citing again to the Hall declaration, it appears that the district court had in mind Collectors own products. However, the district court also cited to a paragraph 33 of a declaration by Mr. Jeff Garrett (A931-40), who referred to four different exhibits relating to various NGC coin holders (A941-56). Of this various prior art, the only one in common with the prior art analyzed with respect to claim limitation 1(a)(i) is the NGC Star® Holder, and the only one in common with the prior art analyzed with respect to claim limitation 1(a)(ii) is Collectors' coins. Clearly, the 1976 Paramount Auction Catalog does not disclose "a standard clear plastic coin holder device . . .," as recited in claim limitation 1(b).

Next, the district court turned to claim limitation 1(c), the "eye appeal-related information indicator . . . plus ('+') symbol" limitation, and again found that this limitation "was anticipated by prior art." A10. As an example, the

district court referred to the NGC Star® Holder, A9, even though that example utilizes a star symbol, not a plus symbol.

The district court's anticipation analysis was legally flawed (and factually flawed as explained below). It was error to compare claim 1 to diverse pieces of prior art, find (mistakenly) that each claim limitation was disclosed somewhere in any prior art in general, and call that anticipation. The district court's summary judgment of invalidity should be reversed for that reason.

The district court seems to have wrongly conflated the separate statutes and analysis for §§ 102 and 103. A3. That is contrary to long-standing Federal Circuit authority. *See, e.g., Jones v. Hardy*, 727 F.2d 1524, 1531 (Fed. Cir. 1984) (faulting district court that "confuses anticipation by inherency, i.e., lack of novelty, with obviousness, which, though anticipation is the epitome of obviousness, are separate and distinct concepts.") (citations omitted).

Moreover, the district court's flawed analysis of claim 1 tainted its conclusion that claims 3 and 4 – both of which refer to and incorporate the limitations of claim 1 – are also invalid. *Cf. In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (allowing dependent claims that depend from and further limit

allowable base claims). Thus, this Court should reverse the summary judgment of invalidity of claims 1, 3, and 4.

C. The district court erred in granting summary judgment of obviousness.

As noted earlier, by conflating the separate concepts, statutes and analysis for §§ 102 and 103 (A3), it is unclear whether the district court's invalidity determination was based on anticipation or obviousness. The district court referred to both statutory bases in its decision. A3, A7, A8 ("Thus, prior art either anticipated or rendered obvious 'providing an uncirculated coin . . . having been fractionally graded.'"), A10 (". . . prior art anticipated '889 patent claims 1, 3, and 4. Each element of those claims was either already in practice or an obvious variation of existing practices.") To the extent that the district court's decision is premised on obviousness, that decision is legally incomplete and incorrect, as explained below.

1. The district court failed to identify a specific combination of prior art.

First, the district court failed to identify a specific combination of prior art references to support an obviousness conclusion. Instead, the district court

determined (sometimes incorrectly) that either the 1976 Paramount Auction Catalog, the NGC Star® Holder, Collectors' own alleged prior art, or the "prior art" in general individually taught certain limitations of claim 1. A7-10. However, the district court did not identify a specific combination of those references that allegedly matches the claimed invention. Nor did the district court identify any particular modification to any one of those individual references so as to result in the claimed invention. Indeed, no primary reference was identified. The district court's summary judgment opinion is completely silent as to how to put the various prior art pieces together to result in the claimed invention. As a result, it is completely mysterious what features of which alleged prior art would in combination, according to the district court, result in the claimed invention.

That omission is a fatal flaw in the district court's obviousness analysis. Without a clear identification of how one of ordinary skill in the art would have combined the prior art teachings to arrive at the claimed invention, the obviousness determination must be reversed. As the Supreme Court has explained, "A patent composed of several elements is not proved obvious by

merely demonstrating that each of its elements was, independently, known in the prior art." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Yet that is all that the district court did – "merely demonstrating that each of its elements was, independently, known in the prior art." *Id.*

More is required, specifically at a minimum an identification of how one skilled in the art would have combined the prior art to arrive at the claimed invention. Such an identification is necessary for several reasons. First, without such information, Blake (or any other patent owner in similar circumstances) could not meaningfully respond to the obviousness contention. Second, without knowing what the combination or modification of prior art teachings is, the district court could not correctly judge its obviousness. Third, without an identification of the proposed modification or combination of prior art teachings, no court can determine whether there would have been a sufficient rationale, such as, for example, a teaching, motivation, or suggestion, to make that proposed modification or combination. Such a rationale is required to support a conclusion of obviousness. *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (requiring "some articulated reasoning with some rational

underpinning to support the legal conclusion of obviousness" (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (quotation marks omitted)).

Moreover, one needs to know the specific combination or modification of prior art teachings to judge whether that modification or combination would survive various other legal requirements for obviousness, such as whether **that** modification or combination would render the prior art unsatisfactory for its intended purpose, *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984), whether **that** modification or combination would change the principles of operation of a reference, *In re Ratti*, 270 F.2d 810, 813 (C.C.P.A. 1959), and whether one of ordinary skill in the art would have had a reasonable expectation of success to make **that** modification or combination, *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1361 (Fed. Cir. 2007).

Not surprisingly, the Manual of Patent Examining Procedure explains the PTO's policy in this respect to patent examiners, saying "35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references" and requiring that "the examiner should set forth . . . the proposed modification of

the applied reference(s) necessary to arrive at the claimed subject matter." M.P.E.P. § 706.02(j) (9th ed. 2014) (emphases added). The same requirement applies to courts making obviousness determinations.

2. The district court failed to articulate a rationale for combining the prior art to arrive at the invention claimed in the '889 patent.

As noted above, an obviousness conclusion requires a finding of "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at 418 (quoting *Kahn*, 441 F.3d at 988). In this case, however, the district court failed to articulate any rationale to alter the prior art at all. As such, the obviousness analysis is incomplete and summary judgment was improvidently granted. Indeed, in *Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343, 1354 (Fed. Cir. 2013), this Court faulted a district court for merely reciting "common sense" as the rationale to support a determination of obviousness of a combination of prior art when the district court failed to provide any explanation supporting that assertion. The district court's omission in this case is more serious than in *Plantronics*, as the district court in this case provided no rationale whatsoever – not even an

unsubstantiated claim of "common sense" – to support its obviousness conclusion. That was reversible error.

3. The district court failed to consider evidence of objective indicia of nonobviousness.

Yet another flaw in the district court's obviousness analysis was a failure to consider objective indicia of nonobviousness. As this Court knows well, the *Graham* factors include secondary, objective indicia of nonobviousness, if any. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). In this case, Blake presented strong evidence of objective indicia of nonobviousness. Specifically, Blake pointed out (1) skepticism within the industry that fractional grading, as claimed as part of the '889 patent's invention, would be successful and (2) Collectors' own promotional public survey presented as the "Big One," in which David Hall publically challenged the numismatic public to try to guess what would be the invention (after disclosing the invention elements), and which Collectors intended to make public on March 25, 2010 (*i.e.*, Secure® +). A1366-67; A1374-1375; A1864-65; A1603.

Regarding industry skepticism, Blake presented actual admission evidence from Collectors that Hall expressed skepticism about fractional

grading and whether it could work at all in the industry. A742, ¶38; A1088. In fact, when Hall co-founded PCGS in 1986 (and Collectors in 1999), he elected to use whole numbers for grading, and not fractional grading. And PCGS did not introduce fractional grading until 2010 – after having learned of Blake's invention. As this Court knows, "[e]xpressions of disbelief by experts constitute strong evidence of nonobviousness." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983).

Next, Blake submitted evidence that Hall, as part of a Collectors' promotion entitled "the Big One," offered a $1,000 payment to participating coin collectors and numismatists to guess the "invention" that was Collectors' Secure® + product, before it was made public. A1891, ¶ 3; A2032; A1128. Not one of the 1,400 guesses was correct. A2113, ¶ 43. That is telling objective indicia of nonobviousness, especially in light of (1) Blake's infringement allegations that the Secure® + product and service infringes the claims of the '889 patent; (2) Collectors' admissions in its pleadings that Secure® + satisfies limitations of the '889 patent claims (A26, ¶ 9; A745, ¶ 78); and (3) Collectors' failed attempt to use the Secure® + product as invalidating prior art under 35

U.S.C. § 102(g). Indeed, Hall, an admitted numismatic expert and inventor himself (A691, ¶ 15; A740) actually described the three-element Secure® + "invention" as coming from "way out in left field." A1603.

The district court did not consider Blake's contentions or evidence regarding this objective indicia of nonobviousness. That was error. When Blake's evidence is viewed in the light most favorable to Blake, it can reasonably be inferred that the '889 patent claims an nonobvious invention, even if Collectors had made a *prima facie* case of nonobviousness. *See Plantronics,* 724 F.3d at 1354-57 (reversing summary judgment of invalidity where district court failed to give weight to secondary considerations of nonobviousness because "when all of the factual disputes regarding the objective evidence are resolved in favor of [the patent owner], we cannot hold that the claims would have been obvious as a matter of law."). Thus, at a minimum, Blake's evidence of objective indicia created a genuine issue of material fact for trial, and summary judgment of obviousness was improper.

4. Summary judgment of nonobviousness is warranted.

The deficiencies in the district court's obviousness analysis, while legally indefensible, are perhaps understandable, as Collectors' obviousness contentions presented to the district court were deficient in the same way. Neither Collectors' expert Mr. Garrett nor principal Mr. Hall (A1855, § 1.3; A1843; A2120, ¶ 75) provided the district court with any factual basis for their obviousness assertions. Both offered conclusory insights and failed to explain how specific references could be combined, which combination(s) of elements in specific references would yield a predictable result, or how any specific combination would operate or read on the asserted claims. Rather, Collectors' evidence on obviousness was limited to conclusory statements that a person of ordinary skill in the art would have known, based on the alleged "prior art" nature of the claimed components, how to combine any of a number of references to achieve the claimed invention in the '889 patent. That was an insufficient analysis, fraught with hindsight bias. *See Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373-74 (Fed.Cir. 2008) ("Such vague testimony would not have been helpful to a lay jury in avoiding the pitfalls of hindsight that belie a determination of obviousness.").

Because Collectors did not propose a specific modification or combination of prior art teachings and did not offer a teaching, suggestion, motivation, or other rationale to combine or modify the prior art teachings, *see* A896-98 (Collectors' obviousness arguments in its summary judgment motion), the district court could have – and should have – entered summary judgment against Collectors, as Blake requested, *see* A1356, A1366, A1854, A1864. *See Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 311 (9th Cir. 1982) (explaining that court may *sua sponte* grant summary judgment to non-moving party where moving party cannot prove its case on undisputed facts). In other words, the district court should have entered summary judgment that claims 1, 3, and 4 of the '889 patent are not invalid under 35 U.S.C. § 103. The Court should now direct the district court to do so upon remand. *See Chiuminatta Concrete Concepts*, 145 F.3d at 1311 (directing district court to enter summary judgment in non-movant's favor).

D. The district court erred in granting summary judgment of invalidity based on the 1976 Paramount Auction Catalog.

The district court's reliance on the 1976 Paramount Auction Catalog (A958-65) was premised on an incomplete and incorrect understanding of that

document. That document is a booklet listing coins for sale at an auction in 1976. That document is not a coin holder or method of displaying labels. Nor does it depict or describe a coin holder. Instead, it is a marketing booklet containing images, descriptions, and prices of coins for sale by the Paramount International Coin Corporation in November 1976.

The district court cited to the 1976 Paramount Auction Catalog for its use of the + symbol following a Sheldon number grade for an uncirculated coin. According to the district court, the catalog was "[e]vidence [that] shows that the practice of adding such distinguishing marks [+] was established as early as the 1970s." A8. Specifically, the district court reproduced an excerpt of the catalog showing a coin graded as "MS-65+":

1863, MS-65+. Another excellent combination of outstanding quality and unquestionable rarity at a price just slightly above that of the most common dates! We have observed the

A8, A964.

1. **The district court ignored meaningful claim language during its analysis of the 1976 Paramount Auction Catalog.**

The district court relied on the 1976 Paramount Auction Catalog as part of its analysis of claim limitation 1(a)(i), which the district court characterized in an abbreviated fashion as "providing an uncirculated coin . . . having been fractionally graded." A7 (ellipses in original). The district court understood that the + symbol in this catalog meant that the coin was considered to be "somewhat better than the listed quantitative grade, but not good enough to qualify for the next highest one." A8 (quoting A961).

However, the claim language following the portion quoted by the district court's quotation is significant. The complete limitation 1(a)(i) reads, "a) providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." A732, col. 16:3-6 (emphasis added). As explained below, the district court disregarded evidence that the 1976 Paramount Auction Catalog does not satisfy this overlooked language of the claim.

If the district court simply failed to give weight to the language following the terms "fractionally graded," as suggested by the district court's incomplete quotation of the claim limitation 1(a)(i) in its summary judgment opinion (A7), then that was error. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (explaining that "claims are interpreted with an eye toward giving effect to all terms in the claim"). That is especially true where, as here, the PTO indicated that the complete limitation 1(a)(i) was not disclosed or suggested by the prior art. A2257 (". . . the combination identified as raising a substantial new question of patentability in the Order [Granting Reexamination

Request] – Rare [the 1976 Paramount Auction Catalog], Graded, and the Admitted Prior Art – fail to teach a number of limitations of claim 1. Most importantly, the prior art does not teach a coin 'fractionally graded with one whole number in the numerical 60-70 range'."). *See 01 Communique Lab., Inc. v. Logmein, Inc.*, 687 F.3d 1292, 1299-1300 (Fed. Cir., 2012) (treating reexamination prosecution history as intrinsic evidence for purposes of claim construction); *see also St. Clair Intellectual Prop. Consultants, Inc. v. Canon Inc.*, 412 F. App'x 270, 276 (Fed. Cir., 2011) (nonprecedential) ("Because an examiner in reexamination can be considered one of ordinary skill in the art, his construction of the asserted claims carries significant weight.").

To the extent the district court implicitly construed "fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale," the court's implicit construction was incorrect. The parties did not dispute the meaning of the phrase "fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale" before the district court. Instead, the parties disputed only the construction of the terms "eye appeal"

and "eye appeal-related information indicators," agreeing that all other terms would take their plain and ordinary meaning. A46-50. If the district court thought that the plain and ordinary meaning of the phrase "fractionally graded within one whole number" could cover something indicating an intermediate value between 60 and 65 or between 65 and 70, that was an erroneous understanding of the plain meaning of the phrase. The plain meaning of the phrase connotes something less than one whole number, like a fraction in mathematics. In fact, the parties themselves in claim construction each offered their plain meaning of 'fractional grading', with each parties' interpretation being "within" a whole number. A647-A648. Collectors offered the following interpretation of the phrase: "one of several discrete units indicating a position **within** an already-established uniform standard for evaluating the physical condition of the coin." A648 (emphasis added).

2. The district court failed to consider evidence regarding the Sheldon numbers utilized in the 1976 Paramount Auction Catalog.

The district court erroneously disregarded evidence that the Sheldon scale used in the 1976 Paramount Auction Catalog did not grade coins "within

one whole number in the numerical 60-70 range." Rather, the Sheldon scale in use when this catalog was published in 1976 utilized only the numbers 60, 65, and 70 to grade uncirculated coins. Evidence of that fact is within the 1976 Paramount Auction Catalog itself, which explains in the first sentence immediately below the following table listing only "MS-60," "MS-65," and "MS-70" for uncirculated coins that "[i]ntermediate numbers are *not* used" (emphasis in original):

OLD Descriptive Grade	NEW Quantitative Grade
Poor	Poor-1
Fair	Fair-2
About Good	AG-3
Good	Good-4
Good-Very Good	Good-6
Very Good	VG-8
Very Good-Fine	VG-10
Fine	Fine-12
Fine-Very Fine	Fine-15
Very Fine	VF-20
Choice Very Fine	VF-25
Very Fine-Extremely Fine	VF-30
Extremely Fine	EF-40
Extremely Fine-About Uncirculated	EF-45
About Uncirculated	AU-50
About Uncirculated-Uncirculated	AU-55
(Brilliant) Uncirculated	MS-60
Choice (Brilliant) Uncirculated	MS-65
Gem Uncirculated (Perfect)	MS-70

Intermediate numbers are *not* used. However, on occasion a (+) is used to designate that a given coin is somewhat better than the listed quantitative grade, but not good enough to qualify for the next highest one.

A961; *see also* A54 n.3 (Plaintiff's claim construction brief quoting the same). The district court ignored that evidence.

3. The overlooked evidence raises a genuine issue of material fact whether the 1976 Paramount Auction Catalog satisfies claim limitation 1(a)(i).

Thus, evidence of record shows that the + symbol in the 1976 Paramount Auction Catalog does not teach "fractional[] grad[ing] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale," as expressed in claim limitation 1(a)(i). Instead, the evidence shows that the + symbol in that catalog denoted intermediate grading between non-consecutive numbers like 60, 65, and 70. In other word, the "+" in "65+" in the catalog did not connote some fractional grade between 65 and 66; instead, it connoted an intermediate grade between 65 and 70.

In the face of this evidence, the district court erred by granting summary judgment against Blake. Instead, the district court should have recognized that this evidence, especially when viewed in the light most favorable to Blake, at least raises a genuine issue of material fact that the 1976 Paramount Auction Catalog does not satisfy claim limitation 1(a)(i). *See* Fed. R. Civ. P. 56(c); *Anderson*, 477 U.S. at 255.

4. The PTO understood during reexamination that the 1976 Paramount Auction Catalog fails to teach claim limitation 1(a)(i).

The reexamination request filed by Collectors proposed rejections of all claims of the '889 patent under 35 U.S.C. § 103 as allegedly obvious over the 1976 Paramount Auction Catalog (what the reexamination request called "Rare") in combination with other references. A790-92. Collectors' reexamination request argued specifically that the + symbol shown in the 1976 Paramount Auction Catalog indicated a fractional grade, contending that "[t]he Rare reference doesn't specifically refer to eye appeal, but instead says that a '+['] is utilized to designate that a given coin is 'somewhat better'." A797; *see also* A830-31 (claim chart).

However, immediately after granting the reexamination request, the PTO confirmed the patentability of the claims, explaining that "the combination identified as raising a substantial new question of patentability in the Order - Rare, Graded and the Admitted Prior Art - fail to teach a number of limitations of claim 1. Most importantly, the prior art does not teach a coin 'fractionally graded within one whole number in the numerical 60-70 range'." A2257.

Thus, the reexamination examiner realized that the 1976 Paramount Auction Catalog fails to disclose claim limitation 1(a)(i). *See St. Clair Intellectual Prop. Consultants,* 412 F. App'x at 276 (nonprecedential) (giving "significant weight" to determinations of reexamination examiner "[b]ecause an examiner in reexamination can be considered one of ordinary skill in the art."). The reexamination examiner reached this conclusion without any argument from Blake, implying that the reexamination examiner, unlike the district court, read and understood the clear meaning of the statement in the 1976 Paramount Auction Catalog that "[i]ntermediate numbers are *not* used." The district court's contrary determination should not stand.

5. Summary judgment in Blake's favor that the 1976 Paramount Auction Guide does not disclose "fractional[] grad[ing] within one whole number . . ." is warranted.

A court may *sua sponte* grant summary judgment to the non-moving party where the moving party cannot prove its case on the undisputed facts. *Cool Fuel*, 685 F.2d at 311; *see also Chiuminatta Concrete Concepts*, 145 F.3d at 1311 (citing *Cool Fuel* and directing district court to enter summary judgment in non-movant's favor). In this case, Blake invoked this rule to request that the

district court grant summary judgment in his favor as he opposed Collectors' motion of summary judgment of invalidity. A1854.

Summary judgment for Blake is warranted in this case as Collectors offered no evidence that the Sheldon scale as used in the 1976 Paramount Auction Catalog utilized consecutive numbers in the range 60-70 such that the + symbol could possibly represent a "fractional[] grade[] within one whole number," as the '889 patent claim 1 requires. Instead, Collectors' expert witness, Mr. Jeff Garrett, carefully skipped over the sentence in the catalog saying, "Intermediate numbers are not used." When discussing the catalog and its use of the + symbol, Mr. Garrett used ellipses to skip over that sentence so as to imply that the + symbol in the catalog did represent a fractional grade:

> 18. As an example from 1976 using the "+" symbol, the book *Paramount Presents, Rare Coin List No. 14, November 1976*, defines on the fourth page the use of "+" is described as ". . . on occasion a (+) is used to designate that a given coin is somewhat better than the listed quantitative grade, but not good enough to qualify for the next highest one." A true and correct copy of referenced portions of *[Paramount] Presents, Rare Coin List No. 14, November 1976* is attached hereto as Exhibit 5.

> 19. In addition, Exhibit 5 at pages 5-8 contain representative samples of coins for sale in 1976 that use the "+" symbol to indicate a higher fractional grade. There are many other examples in the full publication but it is too voluminous to attach to this declaration and it would merely be repetitive.

A935 (underlining added).

In fact, Mr. Garrett's declaration carefully danced over the fact that intermediate numbers were not then used in the Sheldon scale for uncirculated coins. For example, Mr. Garrett's explanation of the "Sheldon Scale and Fractional Grading" coyly refers to "the next higher grade" without explaining that the next higher grade was not the next integer. A934-35 (¶¶ 16, 17). Blake noted Mr. Garrett's omission in his testimony, stating, "Well, in fairness, he does actually start the quote after 'intermediate numbers are not used.' It's a distinction that I don't think is lost on Mr. Garrett." A1460.

Led astray by Mr. Garrett's testimony, the district court overlooked the sentence in the 1976 Paramount Auction Catalog that "[i]ntermediate numbers are not used." Without that key context, the district court misunderstood the meaning of the + symbol in the catalog and erroneously concluded that it is a "fractional[] grade[] within one whole number," as recited in claim 1.

However, when that sentence is recognized, it is undisputed evidence in Blake's favor. Even when Mr. Garrett's testimony is viewed in the light most favorable to Collectors, that testimony does not overcome the plain statement in the 1976 Paramount Auction Catalog that "[i]ntermediate numbers are not used." Accordingly, the district court should have granted summary judgment in Blake's favor on this point, and this Court should now direct the district court to do so.

E. The district court erred in granting summary judgment of invalidity based on the NGC Star® Holder prior art.

The district court found that there was no triable dispute that the ★ symbol on the NGC Star® Holder satisfies claim limitation 1(a)(i) – "fractional[] grad[ing] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." A7-8. Specifically, the district court referred to the following NGC coin holder bearing the mark "MS 68★":

A7, A946.

According to the district court: "As Blake admitted, the star adjacent to that grade is 'a designation that's added to coins that collectors have that are considered to be very eye appealing.' Thus, the star rating serves to differentiate coins with the same Sheldon whole number." A7. However, as explained below, the district court conflated "eye appeal" with "fractional[]

grad[ing] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale" and, as a result, erred in granting summary judgment based on this prior art.

1. The district court failed to consider evidence that the ★ symbol on the NGC Star® Holder does not signify a grade.

a. NGC's own explanation of the ★ symbol expressly says it is not a fractional grading indicator.

The best and most objective evidence of the meaning of the ★ symbol on the NGC Star® Holder is what NGC says. NGC unequivocally stated in their June 2000 newsletter "NGC News & Views" that their ★ symbol is not a grade but purely an eye appeal indicator:

> In case you haven't heard, we are now placing an expanded description on the holder labels of a few modern series coins. The descriptions are for White (W) Toned (T) and Exceptional Eye Appeal (★). . . .
>
> The ★ designation is used to identify a coin that, in the opinion of NGC's grading team, displays superior eye appeal within that grade (not a higher grade than one without a ★). Please don't construe these designations as new grades or grades within grades. They're not. . . .

A2037 (emphasis added).

This evidence was not considered by the district court, and that was error. This evidence by itself is sufficient at least to create a genuine issue of material fact that the ★ symbol on the NGC Star® Holder does not satisfy claim limitation 1(a)(i) – "fractional[] grad[ing] within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale."

b. Blake testified that the ★ symbol in the NGC Star® Holder does not denote a fractional grade.

Furthermore, Blake submitted a declaration explaining to the district court that the ★ symbol on the NGC Star® Holder is not a fractional grade but purely an eye appeal indicator:

> . . . Mr. Garrett, equates the "star" eye appeal designator of NGC to the + grading indicator of the claimed invention, and uses 4 exhibits to make his point. Dkt. No. 71 ¶ 18. But in doing so, Mr. Garrett confuses grading and non-grading information indicators. For example, the NGC * [★] is not a formal part of a coin's grade, but merely indicative of its eye appeal. . . .

A1881, A2103 (same in "corrected" declaration). Moreover, Blake explained this same point repeatedly in his deposition testimony. For example, Blake testified as follows:

> . . . when NGC grades and holders, we call it, inserting a coin into a holder, holdering, they include a label, and sometimes they will give a star to a coin based on the eye appeal of the coin. So they do have that system, but they don't always give a star to a coin. So the designator of the star, the indicator of the star, is given because of eye appeal, but it's more of a – it's more of a showing that the coin has great eye appeal, but is not part of the grade. That's the distinction.

A1390 (emphases added); *see also* A1462-64, A1468-70, A1487.

In addition, Blake said the same thing as the inventor, writing in the "BACKGROUND OF THE INVENTION" section of the '889 patent, "In a further attempt to give credit to eye appeal, NGC has used a 'star' label system on the plastic holder to credit a coin that has exceedingly beautiful eye appeal as compared to other coins in the same technical grade." A725 (col. 2, lines 23-27). That statement is additional evidence that the ★ symbol on the NGC Star® Holder is not a fractional grade but purely an eye appeal indicator.

In the face of Blake's statements regarding the meaning of the ★ symbol on the NGC Star® Holder, the district court should not have granted summary judgment of invalidity, as those statements at least create a genuine issue of material fact that the ★ symbol on the NGC Star® Holder does not satisfy the "fractional[] grad[ing]" claim limitation 1(a)(i).

c. NGC's trademark for the ★ symbol in the NGC Star® Holder is evidence that it is not a fractional grading indicator.

Additional evidence that the ★ symbol on the NGC Star® Holder is not what the district court thought it to be is the fact that NGC registered the ★ symbol as a trademark. A2035. As this Court knows well, the purpose of a trademark is "to identify and distinguish . . . goods . . . from those manufactured or sold by others and to indicate the source of the goods." 15 U.S.C. § 1127. As a source identifier, a trademark may not be wholly functional. Indeed, NGC's registration of the ★ symbol on the principle register is evidence that the symbol does not "comprise[] any matter that, as a whole, is functional." 15 U.S.C. § 1052(e)(5). Hence, the trademark registration for the ★ symbol is evidence that the symbol does not serve a functional purpose of indicating a

fractional grade between adjacent Sheldon numbers, as Collectors contended and the district court believed, but rather simply denotes that a coin holder bearing the ★ symbol is an NGC coin holder. The trademark registration for the ★ symbol is thus evidence that at least creates a genuine issue of material fact as to whether the ★ symbol indicates a "fractional[] grade[]" as required by claim limitation 1(a)(i), and the district court erred to grant summary judgment of invalidity in the face of that evidence.

d. The PTO understood during the original examination that the ★ symbol in the NGC Star® Holder is not a fractional grading indicator.

The examiner of the patent application that led to the '889 patent considered the NGC ★ symbol and concluded that it did not denote a fractional grade. Specifically, Blake, as the patent applicant, disclosed to the PTO various documents describing the NGC ★ symbol. A718-19 (listing three NGC as "References Cited" under the heading "OTHER PUBLICATIONS," including the trademark registration, the "News & Views" newsletter cited above and another document entitled "NGC's Plus and Stay [sic: Star] Designations"). Yet, the examiner stated as his reasons for allowance, "The cited prior art does not

anticipate nor render obvious providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." A399. The examiner was right, and the district court's contrary determination should not stand.

e. The overlooked evidence, when viewed in the light most favorable to Blake, raises a genuine issue of material fact whether the NGC Star® Holder satisfies claim limitation 1(a)(i).

At a minimum, summary judgment in favor of Collectors was inappropriate in the face of the various evidence that the ★ symbol in the NGC Star® Holder fails to indicate a "fractional[] grade[]" as required by claim limitation 1(a)(i). The evidence at least creates a genuine issue of material fact on that point, especially when viewed in the light most favorable to Blake and with all justifiable inferences drawn in Blake's favor, as the district court was supposed to do. *See* Fed. R. Civ. P. 56(c); *Anderson*, 477 U.S. at 255.

2. Summary judgment in Blake's favor that the NGC Star® Holder does not disclose "fraction[al] grad[ing] . . ." is warranted.

Summary judgment in Blake's favor that the NGC Star® Holder does not disclose "fraction[al] grad[ing] . . ." is warranted because Collectors repeatedly admitted that fact before the district court. Thus, even when the evidence is viewed in the light most favorable to Collectors and all justifiable inferences are drawn in Collectors' favor, summary judgment in Blake's favor would be appropriate. Even though Blake was the non-moving party regarding validity, he requested summary judgment, which the district court could have and should have granted. *See Cool Fuel*, 685 F.2d at 311 (explaining that court may *sua sponte* grant summary judgment to non-moving party where moving party cannot prove its case on undisputed facts); *Chiuminatta Concrete Concepts*, 145 F.3d at 1311 (directing district court to enter summary judgment in non-movant's favor).

Collectors repeatedly admitted in its briefing and supporting declarations that NGC's ★ symbol is not an indicator of fractional grading but instead purely an indicator of eye appeal. For example, in their December 22, 2014

opposition to Blake's motion for summary judgment of infringement, Collectors pointed out that after the date of the NGC Star® Holder prior art NGC began using a + symbol along with the ★ symbol. A1244. The former indicated fractional grading above the coin's Sheldon grade, while the latter continued to indicate eye appeal:

> The Sheldon grade and eye appeal are two different tools for coin graders, dealers, and collectors to use in evaluating a coin. This fact is demonstrated by PCGS's [related to Collectors] largest competitor Numismatic Guaranty Corporation's ('NGC') use of two separate symbols – a 'star' symbol for eye appeal within a Sheldon grade and a '+' symbol to indicate an above-average coin for its Sheldon grade.

A1244. Collectors went on to reiterate the same point:

> As demonstrated by NGC's use of a 'star' symbol to designate eye appeal separate from a Sheldon Scale grade, **grading for the Sheldon Scale and grading for eye appeal are two completely different activities**. In the art of coin grading, dealing and collecting, it is understood that when someone is determining eye appeal, it does not mean the same thing as grading for the Sheldon Scale. Eye appeal grading involves a more general look at the various elements of a coin. Eye appeal grading speaks in terms of general beauty to the eye of someone viewing the coin. It is not a technical view of how well the coin's original surfaces have been preserved. Garrett Dec., ¶¶ 19-20.

A1249 (emphasis in original). There cannot be any doubt that Collectors considers NGC's ★ symbol to not represent a fractional grade. The following is Collectors' submitted example of NGC's '+' and 'star' grading as displayed on a label:

Collectors introduced this evidence and made these arguments in the hope of convincing the district court that it's own + symbol in the Collectors devices accused of infringement, like the NGC + symbol, does not connote eye

appeal. But unlike NGC, Collectors does not use a separate symbol like the ★ symbol to designate eye appeal. When that evidence – Collector's own evidence, which was never disputed by Blake – is taken at face value, then the inescapable conclusion is that the ★ symbol in the NGC Star® Holder prior art (before NGC's later adoption of the + symbol in conjunction with the ★ symbol) is not a "fractional[] grade[]," as required by claim limitation 1(a)(i) of the '889 patent. The district court should have granted summary judgment in Blake's favor on this point, and this Court should now direct the district court to do so. *See Chiuminatta Concrete Concepts*, 145 F.3d at 1311 (directing district court to enter summary judgment in non-movant's favor).

VII. CONCLUSION

Blake respectfully requests that (1) the district court's summary judgment order be reversed as to the holding of invalidity of the '889 patent's claims 1, 3 and 4; (2) the district court's post-judgment award of costs to Collectors' be

vacated[*]; (3) this Court instruct the district court to enter summary judgment in favor of Blake that Collectors has not met its burden to show that those claims are invalid, and (4) the case be remanded for a determination whether Collectors' Secure® + product and service infringe the '889 patent and, if so, damages for that infringement.

Respectfully submitted,

Date: June 29, 2015

By: /s/ Matthew C. Phillips

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[*] Blake was taxed $3,318.15, including the cost of the transcript of his December 19, 2014 deposition, which he submitted to after the close of discovery and during the time period for opposing Collectors' summary judgment motion, on condition that Collectors bear that cost. A2267.

Counsel of Record for Defendant-Appellant Duane C. Blake

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief of Appellant Duane C. Blake was served by e-mail to the following counsel for the Appellee:

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Dated: June 29, 2015

/s/ Duane C. Blake

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ADDENDUM

1. District Court's Order on Appeal. A1-A11.

2. U.S. Patent No. 8,661,889 (A717-A733), with Reexamination Certificate issued June 9, 2015. A2273-A2274.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-0333 AG (DFMx)	Date	January 20, 2015
Title	COLLECTORS UNIVERSE, INC. v. DUANE C. BLAKE		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant Duane C. Blake ("Blake") is the inventor and owner of United States Patent No. 8,661,889 (the "'889 Patent"), issued March 4, 2014. The '889 Patent claims methods of displaying uncirculated coins. The methods include the use of a label showing that the coins have been given an above-average "eye appeal" ranking within the coin's whole number grade on the conventional Sheldon coin grading scale.

On the same day the U.S. Patent and Trademark Office ("USPTO") issued the '889 Patent, Plaintiff Collectors Universe ("CU") filed this case, seeking a declaration that the '889 Patent is invalid and that CU does not infringe it. (Compl., Dkt. No. 1 at ¶¶ 31-42.) On July 3, 2014, Blake filed Counterclaims against CU, Professional Coin Grading Service ("PCGS"), DHRCC LLC ("DHRCC"), and Expos Unlimited LLC ("Expos Unlimited") (collectively, the "Counterclaim Defendants"). (Am. Answer, Dkt. No. 14.)

Plaintiff filed a "Motion for Summary Judgment or Alternatively, Partial Summary Judgment" asserting that Claims 1, 3, and 4 of the '889 Patent are invalid due to lack of novelty. (Plaintiff's Motion, Dkt. No. 55) Blake filed a "Motion for Partial Summary Judgment as to Direct Patent Infringement Claim." (Blake's Motion, Dkt. No. 60.)

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Because the undisputed evidence shows that Claims 1, 3, and 4 restate prior art widely known in coin collecting, Plaintiff's Motion is GRANTED. As necessarily follows, Blake's Motion is DENIED.

PRELIMINARY MATTERS

At the hearing on these Motions, Blake complained that he had insufficient time to respond to Plaintiff's invalidity arguments because Plaintiff made invalidity arguments in both its own Motion and its opposition to Blake's Motion. But he acknowledged that both Motions were filed on the last day allowed under the Court's scheduling order. (See Dkt. Nos. 11, 13.) Plaintiff did nothing improper by raising its invalidity arguments, and could not wait any longer to file its own motion. For its patent cases, the Court has carefully crafted scheduling rules so cases progress appropriately. Blake has not sufficiently justified changing the timing rules, and the Court finds no good reason to alter them. Therefore, the Court considers the Motions as they were presented.

LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the non-moving party, shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Material facts are those necessary to the proof or defense of a claim, as determined by reference to substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* In deciding a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

The burden initially is on the moving party to show the absence of a genuine issue of material fact or that the non-moving party will be unable to make a sufficient showing on an essential element of its case for which it bears the burden of proof. *Celotex*, 477 U.S. at 322-

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23. Only if the moving party meets its burden must the non-moving party produce evidence to rebut the moving party's claim. If the non-moving party establishes the presence of a genuine issue of material fact, then the motion will be denied. *Nissan Fire & Marine Ins. Co. v. Fritz Co., Inc.*, 210 F.3d 1099, 1103 (9th Cir. 2000) (citing *Celotex*, 477 U.S. at 322).

PLAINTIFF'S MOTION

Plaintiff argues in its Motion that Claims 1, 3, and 4 of the '889 Patent are invalid because they were anticipated by prior art and obvious. The Court agrees.

1. Invalidity under 35 U.S.C. § 102 and 35 U.S.C. § 103

Claims of an issued United States patent are presumed valid. 35 U.S.C. § 282. "A party seeking to establish that particular claims are invalid must overcome the presumption of validity in 35 U.S.C. § 282 by clear and convincing evidence." *State Contracting & Eng'g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1067 (Fed. Cir. 2003). In conducting an invalidity analysis, each claim must be examined individually.

The '889 Patent was filed before March 16, 2013, so the pre-America Invents Act version of 35 U.S.C. § 102 and § 103 applies. Under § 102, a person shall be entitled to a patent unless the invention was "known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent." 35 U.S.C. § 102 (2002). Under § 103, a person may not obtain a patent "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103 (2002). According to these provisions, a patent may be invalidated for lack of novelty.

2. Disputed Claims

The disputed claims concern methods of displaying uncirculated coins with their conventional quality grades and additional indicators for "eye appeal." For context, claims 1, 3, and 4 are reproduced here in full.

UNITED STATES DISTRICT COURT
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CIVIL MINUTES - GENERAL

Case No.	SACV 14-0333 AG (DFMx)	Date	January 20, 2015
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1. A coin value preservation and safeguard holder display method adapted to increase coin grading precision within the conventional Sheldon coin grading standard and further safeguard the condition of an uncirculated coin through the introduction and display of one or more eye appeal-related information indicators, comprising:

a) providing an uncirculated coin, said coin

i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale; and

ii) said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment with a second digital coin image file of said coin created at a later date;

b) including a standard clear plastic coin holder display device capable of displaying a coin label in proximity to said related uncirculated coin; and

c) introducing and displaying said coin label, said label being internally-affixed within said coin holder display device and further capable of displaying at least one eye appeal-related information indicator associated with said uncirculated coin, whereas said at least one eye appeal-related information indicator comprises a plus ("+") symbol printed on said label defined within said display device, said + symbol adjoining the coin's Sheldon whole number grade on said label, and further being located on said label in proximity to said coin such that the indicator is openly displayed, said indicator further correlating to a precise above-average fractional grade condition of said coin.

('889 Patent 15:65-16:24 (emphasis added).)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 14-0333 AG (DFMx)	Date	January 20, 2015
Title	COLLECTORS UNIVERSE, INC. v. DUANE C. BLAKE		

> 3. A method of claim 1 for displaying at least one visual indicator associated with an uncirculated coin by using a coin label situated within an appropriate holder, comprising visually including therewith, and arranged in a manner such that an eye appeal-related indicator associated with said coin comprises a QUERTY plus (+) symbol such as to indicate that said uncirculated coin's eye appeal condition is predetermined to be of above average quality within its Sheldon scale whole number grade, and the preservation safeguard-related indicator associated with said coin comprises a colored label such as to indicate that the uncirculated coin was imaged beforehand using a conventional digital image recording device, and that the imaged coin's digital file is stored in a computer database for future comparative purposes.

('889 Patent 16:41-54 (emphasis added).)

> 4. A coin value preservation and safeguard holder display of claim 1, wherein said holder is capable of displaying one or more labeling indicators that are located in proximity to a graded coin contained within said holder, said holder comprising a graded coin and an internal grading label, said grading label including a first plus ("+") symbol grading indicator capable of displaying to the viewer that the graded coin has been graded using a fractional increment grading scale and found to have above-average eye appeal within the further displayed standard Sheldon scale whole number grade being displayed on the label, said above-average eye appeal condition being based on one or more characteristics of the graded coin, and said label further comprising a second colored symbol label indicator capable of displaying to a viewer that at least one electronic image file of the graded coin displayed within the holder has been previously recorded and said file is as a first file maintained in a standard computer digital file database that allows for future comparative assessment of the first file to a second digital file.

('889 Patent 16:55-17:6 (emphasis added).)

3. Prosecution History

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During prosecution of the '889 Patent, Blake encountered numerous issues with prior art. In the back and forth with the United States Patent and Trademark Office ("USPTO"), the thrust of the invention disclosed in the specification—the AURA grading system for eye appeal—was eliminated from the patent claims. The USPTO then allowed the patent claims, identifying one element undisclosed by cited prior art. This history follows in further detail.

Blake filed a provisional patent application in July 2009. In February 2013, the USPTO issued a non-final rejection of then-pending independent Claim 8 (Claim 1 in the issued '889 Patent). (Office Action, Dkt. No. 28-3 at 148.) The claim originally contained a reference to the "AURA rating of a coin." (Prelim. Amendment, Dkt. No. 28-4 at 57.) In the office action, the examiner stated that a prior art reference disclosed all elements of the claim except "displaying the AURA rating of the coins," but it would have been obvious to a person having ordinary skill in the art "to include and/or substitute whatever grading system [was] readily available to the user." (Office Action, Dkt. No. 28-3 at 148.)

Defendant amended independent Claim 8 to remove all references to the AURA rating and rewrote the claim with greater specificity, including the new language "providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." (Correction to Non-Compliant Amendment, Dkt. No. 28-3 at 93.) In the accompanying remarks, the Defendant stated that "the Applicant has merely clarified the meaning of AURA within the scope of Amended Claim 8." (*Id.* at 97.)

The USPTO then issued a notice of allowance. (Notice of Allowance, Dkt. No. 28-3 at 74-83.) In the notice of allowance, the examiner stated that the reason for allowance was that "the cited prior art does not anticipate nor render obvious providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." (*Id.* at 81.)

4. Plaintiff's Undisputed Evidence of Prior Art

Contrary to the USPTO's decision, it is clear that prior art does anticipate and render obvious "providing an uncirculated coin, said coin I) having been fractionally graded within

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one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale." (*Id.*) Concerning the other elements of the claims, the USPTO was correct that prior art disclosed them as well. The various elements of the claims are addressed in turn.

4.1 Claim 1(a)(i): Uncirculated Coin with Fractional Grade

As noted, the USPTO found that cited prior art did not anticipate or render obvious "providing an uncirculated coin . . . having been fractionally graded." In support of its Motion, Plaintiff has provided ample evidence that prior art did anticipate and render obvious this element of the claim.

An "uncirculated coin" is merely an ordinary coin that shows no wear from circulation. (Garrett Decl., Dkt No. 58, ¶ 9.) Thus it is described by the patent as one that receives a grade between 60 and 70 in the Sheldon whole number scale, which is the top end of the scale. The following image displays a coin sold before Blake filed the patent application in July 2009.

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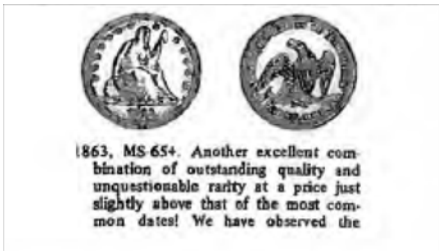
(Garrett Decl., Dkt. No. 58, ¶ 14.) In this image, the "MS68" is the coin's grade on the standard Sheldon whole number scale. As Blake admitted, the star adjacent to that grade is "a designation that's added to coins that collectors have that are considered to be visually very eye appealing." (Meeks Decl., Dkt. No. 55, Ex. D, 10:9-20.) Thus the star rating serves to differentiate coins with the same Sheldon whole number.

Evidence shows that the practice of adding such distinguishing marks was established as early as the 1970s. For instance, the following coin was depicted in a 1976 book.



(Garrett Decl., Ex. 5 at 4.) This coin listing uses a "+" symbol to suggest that the coin is "somewhat better than the listed quantitative grade, but not good enough to qualify for the next highest one." (*Id.* at 7.) Thus, displaying a mark to distinguish uncirculated coins within a single Sheldon whole number is hardly a novel concept.

Tellingly, Blake doesn't dispute that "+" grading systems were employed in the 1970s to differentiate coins with the same Sheldon scale grade. Instead, Blake argues that the use of a "+" symbol is not "fractional grading" as the term is used in the patent claims. (Opp., Dkt. No. 72, at 8:1-11.) He argues that the "+" symbol is merely "a point within a fractional system," or an "above-average indicator." (*Id.*) But it is unclear where Blake sees a relevant distinction here. The Court does not find one. The patent does not disclose a particular fractional grading scale or the number of points on that scale.

Thus prior art either anticipated or rendered obvious "providing an uncirculated coin . . . having been fractionally graded."

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4.2 Claim 1(a)(ii): Digitally Imaged and Electronically Stored in a Database for Future Comparative Assessment

Prior art also anticipated Claim 1(a)(ii), disclosing "said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment." Plaintiff provided undisputed evidence that its coins have been imaged for over 30 years and digitally imaged since at least 2005. (Hall Decl., Dkt. No. 68, ¶5.) Moreover, Plaintiff has used these images to compare future images of the same coin. (*Id.*). Therefore, this element was anticipated by prior art.

4.3 Claim 1(b): Standard Clear Plastic Coin Holder Display Device Capable of Displaying a Coin Label in Proximity to Said Related Uncirculated Coin

Undisputed evidence demonstrates that the plastic coin holders described in Claim 1(b) have existed for decades. (Hall Decl., ¶ 4; Garrett Decl., ¶ 33.) Indeed the claim even describes the holders as "standard." Therefore, prior art anticipated this element.

4.4 Claim 1(c): A Coin Label That Is Internally Affixed in the Holder and Capable of Displaying an Eye-Appeal Indicator

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ewise, the same standard plastic coin ders have long been capable of playing internally affixed labels and e-appeal indicators. Indeed, the owing examples pre-date the patent include internal labels with fractional de indicators:

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(Garrett Decl., ¶ 33.) Therefore, Claim 1(c) was anticipated by prior art.

4.5 Claims 3 and 4: Color Indicator Showing that Coin Was Imaged

Lastly, evidence shows that prior art also either anticipated or rendered obvious the added element of Claims 3 and 4 concerning the use of a color indicator to show that the coin was imaged. Indeed, Plaintiff presented evidence that one major coin grader, NGC, includes a color hologram in all of its coin displays. In addition, NGC images each of its coins. Thus, the presence of NGC's color hologram signals that a coin has been imaged. Claims 3 and 4 add nothing novel to this prior art. Indeed, to the extent NGC's color hologram is not for the explicit purpose of signaling that the coin was imaged, such a use of a colored label would be obvious to one skilled in the art.

CONCLUSION

The evidence is clear and convincing that prior art anticipated '889 Patent claims 1, 3, and 4. Each element of those claims was either already in practice or an obvious variation of existing practices. Indeed, Blake makes almost no effort to dispute Plaintiff's arguments on these points.

The one possibly novel aspect of Blake's invention is the "AURA," or "axial ultimate refractory angle," which is repeatedly mentioned in the specification, but not mentioned at all in the claims. Although difficult to say for certain given the elusive descriptions of the term, the AURA seems to be a way of capturing the coin's eye appeal by identifying the best

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viewing angles. But Blake failed to disclose and claim the precise methods of detecting or rating the AURA, so the Patent Claims cannot survive on that basis.

DISPOSITION

Plaintiff's Motion is GRANTED. Because Defendant's Motion depends on the validity of claims 1, 3, and 4, that Motion is DENIED.

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The United States of America

The Director of the United States Patent and Trademark Office

Has received an application for a patent for a new and useful invention. The title and description of the invention are enclosed. The requirements of law have been complied with, and it has been determined that a patent on the invention shall be granted under the law.

Therefore, this

United States Patent

Grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States of America or importing the invention into the United States of America, and if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States of America, or importing into the United States of America, products made by that process, for the term set forth in 35 U.S.C. 154(a)(2) or (c)(1), subject to the payment of maintenance fees as provided by 35 U.S.C. 41(b). See the Maintenance Fee Notice on the inside of the cover.

Michelle K. Lee

Deputy Director of the United States Patent and Trademark Office

US008661889B2

(12) **United States Patent**
Blake

(10) **Patent No.: US 8,661,889 B2**
(45) **Date of Patent: Mar. 4, 2014**

(54) **AURA DEVICES AND METHODS FOR INCREASING RARE COIN VALUE**

(75) Inventor: **Duane C. Blake**, Westwood, MA (US)

(73) Assignee: **Duane C. Blake**, Westwood, MA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 540 days.

(21) Appl. No.: **12/804,141**

(22) Filed: **Jul. 14, 2010**

(65) **Prior Publication Data**

US 2011/0126618 A1 Jun. 2, 2011

Related U.S. Application Data

(60) Provisional application No. 61/226,263, filed on Jul. 16, 2009.

(51) **Int. Cl.**
G07D 5/00 (2006.01)

(52) **U.S. Cl.**
USPC **73/163**

(58) **Field of Classification Search**
USPC 73/163
See application file for complete search history.

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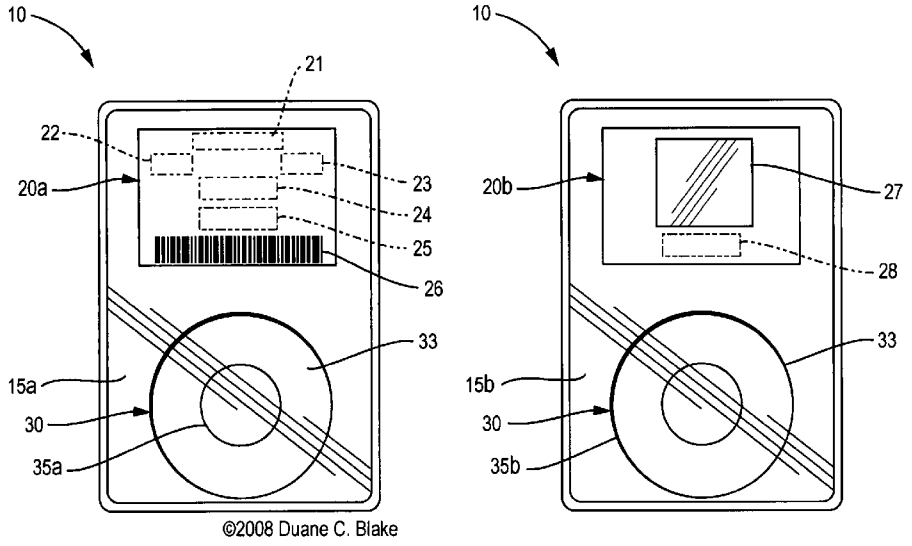
Primary Examiner — Andre Allen
(74) *Attorney, Agent, or Firm* — Duane C. Blake

(57) **ABSTRACT**

The present invention relates to coin value safeguard devices and methods by determining and monitoring the eye appeal of a coin and labeling that eye appeal on an appropriate holder of the coin such that the eye appeal is displayed to a viewer of the holder, and that coin's value is thus increased. Appropriately knowledgeable graders assess a coin's eye appeal by determining the coin's axial ultimate refractory angle(s) (AURA) and assigning an AURA rating to the coin. The coin image is stored in a database where it may be compared to secondary temporal images of the coin as necessary to determine whether coin doctoring has been employed.

5 Claims, 5 Drawing Sheets



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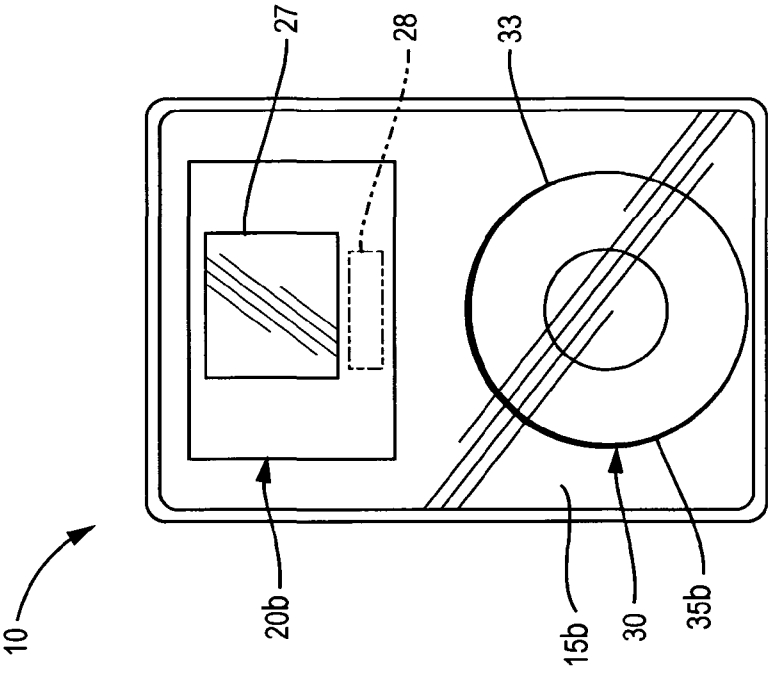
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FIG. 1B

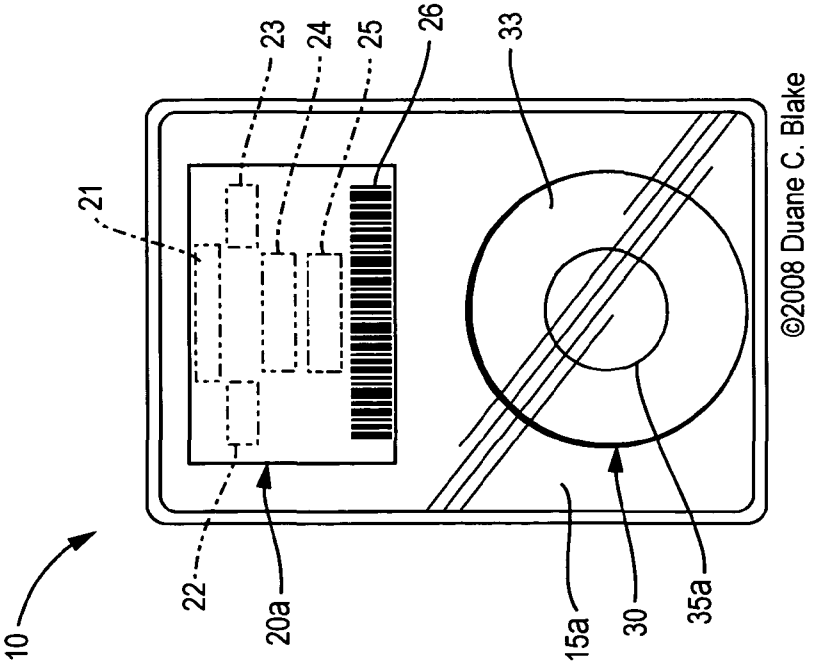
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FIG. 1A

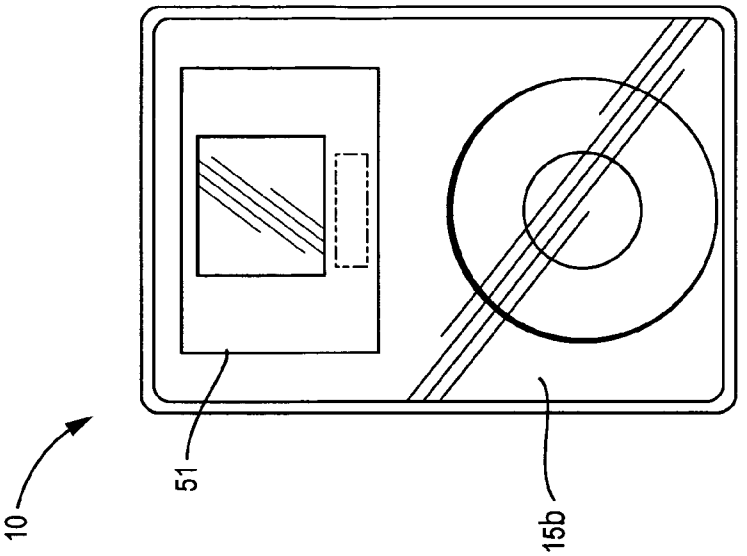

FIG. 2B

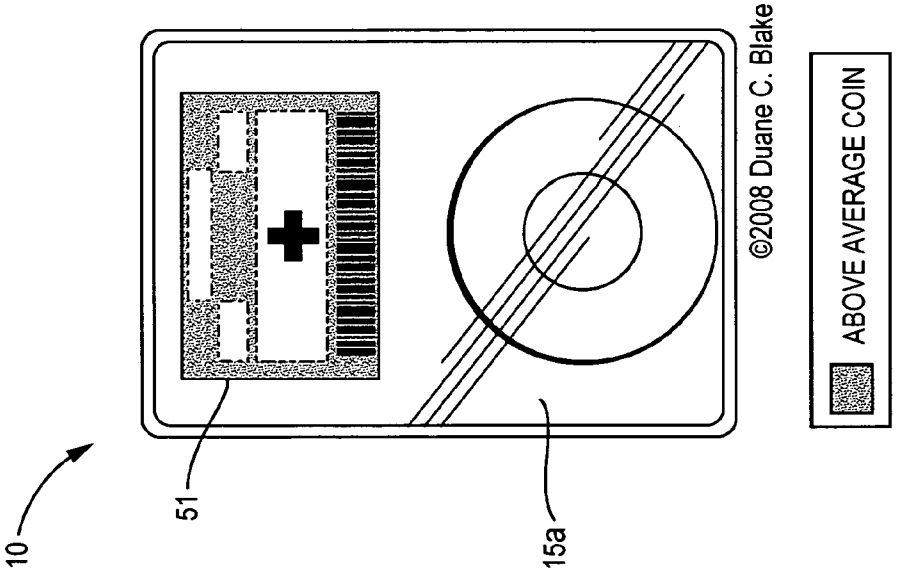

FIG. 2A

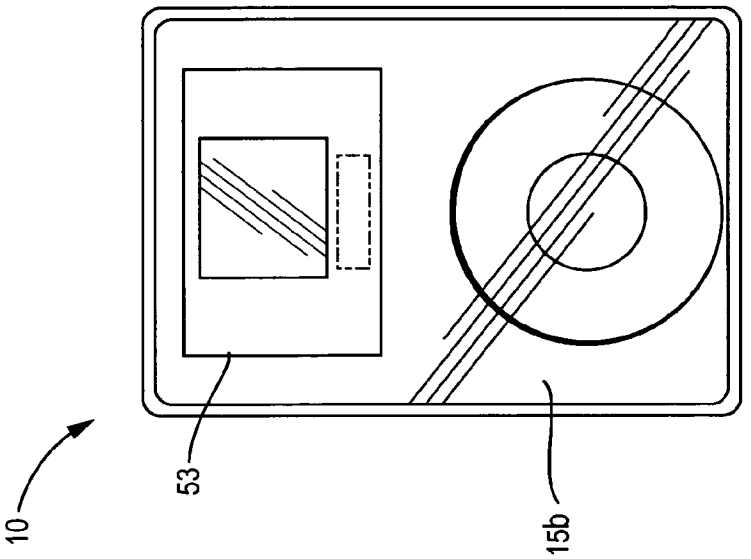

FIG. 2D

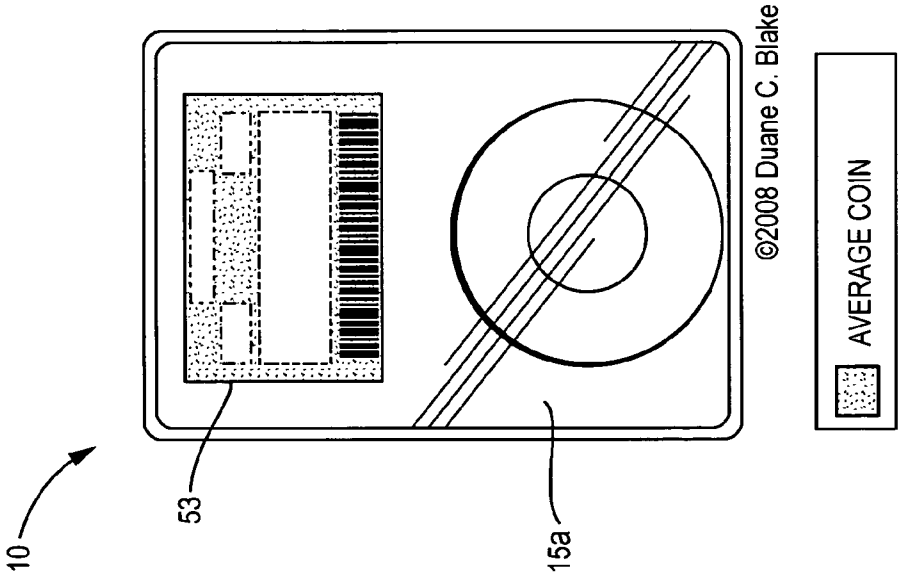

FIG. 2C

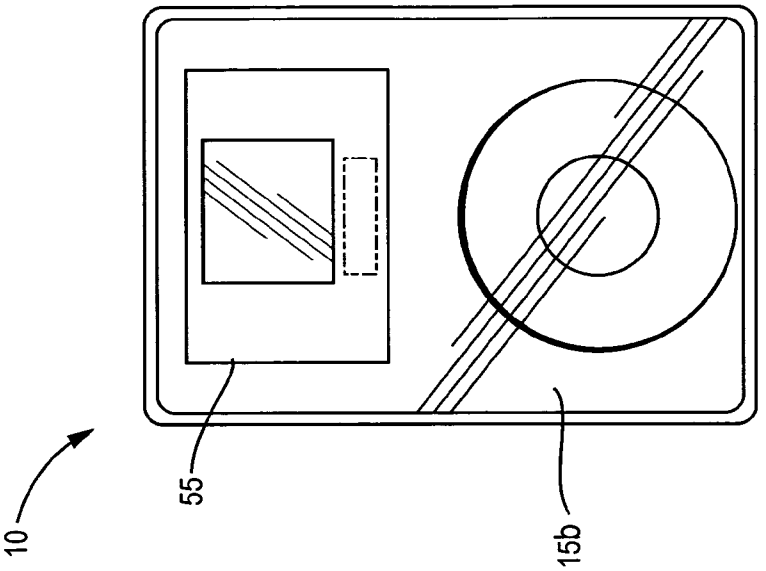

FIG. 2F

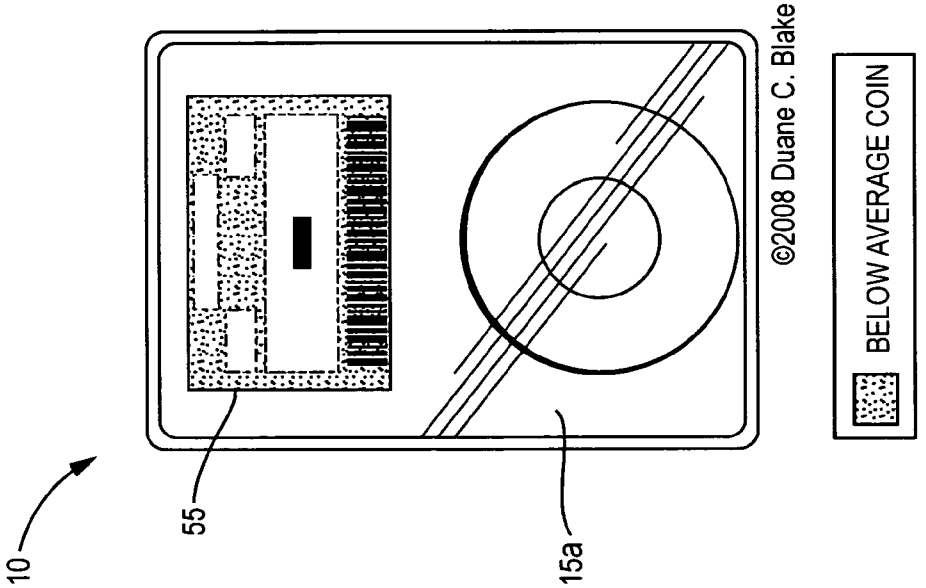

FIG. 2E

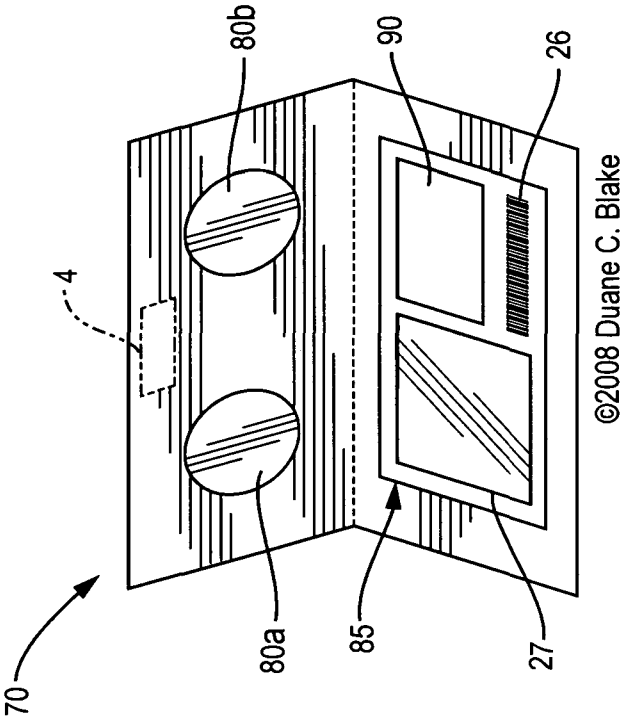
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FIG. 3B

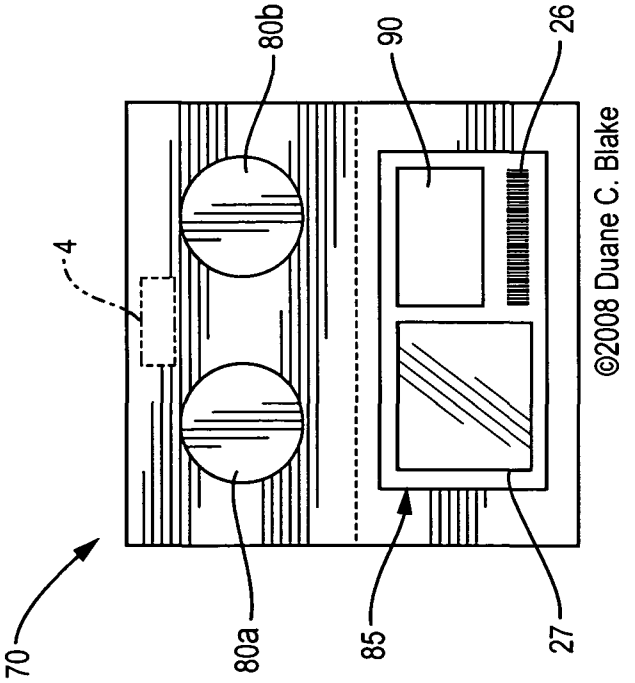
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FIG. 3A

AURA DEVICES AND METHODS FOR INCREASING RARE COIN VALUE

CROSS-REFERENCE TO RELATED APPLICATION

Applicant claims priority and all benefits of U.S. Provisional Patent Application Ser. No. 61/226,263, filed Jul. 16, 2009, which is hereby incorporated by reference in its entirety.

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BACKGROUND OF THE INVENTION

The study and collection of coins and currency has transformed from hobby into profitable industry. The collecting of rare coins in particular has created enormous value, and the market for buying, selling and trading rare coins has significantly expanded in the preceding 100 years. The American Numismatic Association (ANA), a non-profit corporation supporting the rare coin industry, estimated that the total rare coin market experienced domestic sales approximating $2 billion in 2003 alone. This value was spurred by the ongoing development of uniform standards for evaluating or "grading" the physical condition of the coins. The ANA introduced and later updated descriptive terms for grading coins (e.g., Proof, Uncirculated, About Uncirculated, Extremely Fine, Very Fine, Fine, Very Good, Good, Fair, Poor) so dealers and collectors alike could grade the various condition of any given coin. Likewise, Dr. William H. Sheldon created a standardized numerical scale (from 1 to 70), known as the Sheldon Scale, which is now an accepted standard used to add more objectivity to coin grading (e.g. a coin that is graded a '65' on the Sheldon Scale is in a better condition compared to a coin that is graded as a '50'). The basic idea of the Sheldon Scale is that the higher the Sheldon number of a given coin, generally, the greater the value of that coin. While a 100 point grading scale was proposed by numismatist and historian Q. David Bowers, many coin industry insiders rejected the idea, believing that such a system would create confusion and have a detrimental effect on the already-developed industry market. Even with these many positive advancements, however, by the 1970's, the coin market had grown large and chaotic. Coin grading, and thus valuation, which was mostly subjective, varied widely from dealer to dealer, and counterfeit coins were rampant in the marketplace.

Solutions were sought and initiated. The American Numismatic Association Certification Service (ANACS) was created to independently review, authenticate and grade coins for a fee, and this service was tremendously successful. More recently in 1986, the Professional Coin Grading Service (PCGS) was founded, which not only graded and certified coins, but also sealed the coins in tamper-proof plastic holders with interior grading labels displaying the coin and its numeric grade. A year later, another large grading service, the Numismatic Guaranty Corporation (NGC) was started, which performed a service similar to PCGS. The graders of the certification services evaluated coins for the strike, luster and extraneous marks of the coin, and subsequently gave the coin a numeric grade based upon the Sheldon Scale. As mentioned, generally, the higher the numeric grade, the better and, consequently, more valuable the coin. These third-party certification services rapidly became accepted and were

extremely popular with the numismatic community, introducing more consistency, transparency, confidence and stability into the coin market. Investors and collectors in the coin market were becoming more confident.

However, as mentioned, while the foregoing certification services graded the "technical" merits of a coin, including a coin's strike, surface condition, luster, and other technical elements of the coin, none of the services adequately addressed the overall appearance/aesthetic attractiveness of a coin, known as the 'eye appeal' of the coin, despite the fact that eye appeal is critical to and often adds significant value to a coin. This omission of the eye appeal recognition on the grading labels has led to wide variance between the value of coins within the same numeric grade, creating instability and uncertainty in the grading system and the coin market.

While the coin industry has made attempts to rectify this serious problem, no larger uniform attempt has been made to devise a novel eye appeal standard. To be fair, certification services have attempted to recognize a 'better' coin within the same grade (e.g. a '65') by building additional grading points into the official numerical grading number. But the level of value added as an eye appeal sub-grade is unclear from the label on the coin's holder. In a further attempt to give credit to a coin's eye appeal, NGC has used a 'star' label system on the plastic holder to credit a coin that has exceedingly beautiful eye appeal as compared to other coins in the same technical grade. Also, on a smaller scale, private dealers also have their particular grading systems to separate great coins from lesser within the same grade: Rick Snow and Brian Wagner (Eagle Eye Photo Seal™), Rick Tomaska ("Everett™" Coin initiative), David Lawrence (multiple star system), have each developed systems to help collectors differentiate the low end, average and extraordinary coins. Most recently, and on a larger scale, the Certified Acceptance Corporation (CAC™) was created and has given the numismatic field a system dedicated to help distinguish between high-end and low-end coins within the same labeled grades. CAC evaluates whether the grade assigned to a coin by a commercial service and has already been placed in a holder or "slabbed" is appropriately graded, in the opinion of CAC. The holders are then either stickered on the outside of the holder to indicate if they are correctly graded (with a green hologram sticker) or overgraded (with a gold hologram sticker) placed on the outside of the coin holder. For some coins, CAC does not place a sticker. This service has been thus far successful, with stickered coins trading for an average of twenty percent premium in the marketplace. Many industry insiders feel, though, that the service's expertise is quite limited to primarily gold coins, and the holder hologram sticker effort is quite accurate in the gold coin series, yet they feel that many non-gold series are not as accurately appraised and graded by CAC (for example, many copper series coins), and this is a shortcoming of the service. Furthermore, CAC does not delineate the specific eye appeal of a given coin, but merely confirms that a technical grade given by the original grading service is high or low.

Others have also contemplated including other information inside of a slab, for example United States Patent Application Publication Number 20070113451, entitled "Collectable Holders" and filed Jun. 30, 2006 teaches "Data about a collectible may include, for example, the collectible's name (e.g., 1884 Morgan Silver Dollar—$1), the collectible's grade (e.g., MS68), the grading company (e.g., ANACS), the date the coin was graded (e.g., Jan. 1, 2005), any type of additional information about the collectible (e.g., the original mintage or print run), the number of collectibles of that same type graded to date (e.g., 103), the number of type of collectibles of that same type graded that same grade (e.g., 10),

the specific identification number by the grading company for the collectible (e.g., 345981112), additional specific information by the grading company (e.g., internal category number associated to type of collectible such as 6907.68), and other type of information. Such additional information may include, for example, information that may not be able to be printed on a label because of size concerns. Thus, such information may include an extensive history of the collectible, populations for the collectible in a variety of grades, historic pricing information for the collectible in a variety of grades, information about the encapsulation authority (e.g., ANACS contact information), and information about the components of the holder (e.g., information such as type and version)." Still, to the inventor's knowledge, until the present invention, the element of a coin's eye appeal, as quantified as a labeling element within a formal eye appeal grading system, and recorded within an appropriate holder, has not been adequately accomplished or addressed at this time. Given the fact that so much of a collectable coin's value may be impacted by the eye appeal of the coin, this is a surprising fact that actually teaches away from the present invention described herein.

So the problem in the industry becomes clear: the rare coin grading industry is fragmented, and each service may utilize the same technical numerical grading system, but no coordination exists for the consistant recognition of eye appeal within the industry. While many fine grading services exist, including the aforementioned NGC, PCGS, ANACS, SEGS, IGC and the new Dominion Grading Service (DGS), the problem is that each has its various strong selling points, and each is both weak and strong depending on the various methods they employ, or developments they may have built. But, at the base of the problem, the industry is not coordinated on one of the important elements of true coin value: eye appeal. Not one service offers a truly comprehensive analysis, labeling and monitoring of one of the most important and temporally-transitory elements of coin value: (eye appeal, as mentioned, is directly connected to the monetary value of a coin). Without an accepted and stable system to measure eye appeal, the benefit of trading coins in a 'sight-unseen" manner, much like a stock is traded, is not practical. The confidence in the coin's true value cannot be quantified by the buyer with confidence. So none of the present efforts to incorporate the important factor of eye appeal into the grading of coins has been made objective, transparent or has yet been standardized. In other words, the aforementioned services do not fairly and systematically quantify the eye appeal of a coin, despite the fact that the ultimate value of a coin hinges on both its technical merit AND eye appeal.

Hence, there is a need for a system and mechanism that can objectively and systematically determine and record the eye appeal of a coin and then easily and clearly convey this eye appeal to coin dealers, collectors, and investors with adjustments over time when necessary. This system would allow coins with higher eye appeal to appropriately trade for a premium price over coins with lower eye appeal and promote certainty in the coin marketplace. The present invention offers viable solutions to the enumerated industry challenges, including novel methods to remedy the issues discussed above, and unify the industry in this regard.

SUMMARY OF THE INVENTION

The present invention provides devices and methods for objectively and systematically labeling and monitoring the eye appeal of a coin, and thus increasing purchaser and market certainty, thereby increasing that coin's market value. In

one embodiment, the eye appeal of the coin may be evaluated by professional numismatists or those with knowledge in the coin grading arts who determine the axial ultimate refractory angles (AURA) of a coin. A holder of the coin can be labeled with the eye appeal determined and labeled so that the eye appeal rating of the coin is recorded on the coin holder label and visible to anyone viewing the coin. In a further embodiment, the labeled coin can be monitored over a period of time in order to be sure that it maintains the eye appeal rating over time and that has not naturally diminished in eye appeal (known as 'turning in the holder') or been unnaturally tampered with by any number of coin manipulation methods.

Accordingly, the present invention relates to a method of determining and labeling the eye appeal of a coin, the method comprising providing one or more appropriately knowledgeable numismatists or those skilled in the grading arts ('known as graders') and a manner by which to determine the axial ultimate refractory angle of the coin; using the graders in a manner such that the axial ultimate refractory angle of the coin is properly determined; and labeling on an appropriate holder of such coin in a manner such that the axial ultimate refractory angle of the coin is displayed to a viewer of the holder. In one embodiment, the labeling of the coin is performed by including a color-coded label inside of the appropriate holder which indicates the axial ultimate refractory angle of the coin. In another embodiment, the color-coded label inside of the appropriate holder indicates that the axial ultimate refractory angle of the coin is above average, average or below average. In yet another embodiment, the labeling of the coin is performed by including a number on the label inside of the appropriate holder which indicates the axial ultimate refractory angle of the coin using alpha-numeric or keyboard characters, as are defined herein. In further embodiments, the number on the label inside of the appropriate holder that indicates the axial ultimate refractory angle of the coin is a number from 1 to 4, 1 to 10 or 1 to 70. In another embodiment, the one or more graders are knowledgeable about the series to which the coin belongs. In yet another embodiment of the method, the eye appeal of the coin is re-determined after an interval of time and the appropriate holder of the coin is re-labeled with the re-determined axial ultimate refractory angle. In one embodiment, the interval of time is one year, and in another embodiment, the interval of time is every two years.

The present invention also relates to a method for determining the eye appeal of a coin using one or more axial ultimate refractory angles of the coin, the method comprising the steps of visualizing under appropriate illumination one or more axial ultimate refractory angles on the obverse and reverse sides of the coin; evaluating the one or more axial ultimate refractory angles on the obverse and reverse sides of the coin by eye; inspecting the one or more axial ultimate refractory angles on the obverse and reverse sides of the coin under appropriate magnification; and rating the one or more axial ultimate refractory angles on the obverse and reverse sides of the coin, wherein the steps of the method are performed by an appropriately knowledgeable grader. In one embodiment, the appropriately knowledgeable grader visualizes the one or more axial ultimate refractory angles on the obverse side of the coin by holding the coin with the obverse side facing up in a plane parallel to the ground; viewing the obverse side of the coin for an axial ultimate refractory angle; tilting the obverse side of the coin to one or more angles; and viewing the obverse side of the coin at each of the one or more angles to identify one or more axial ultimate refractory angles. Similarly, for the reverse side of the coin, the appropriately knowledgeable grader visualizes the one or more

axial ultimate refractory angles on the reverse side of the coin by holding the coin with the reverse side facing up in a plane parallel to the ground; viewing the reverse side of the coin for an axial ultimate refractory angle; tilting the reverse side of the coin to one or more angles; and viewing the reverse side of the coin at each of the one or more angles to identify one or more axial ultimate refractory angles.

In a particular embodiment of the method, the coin is inspected under 5 times, 10 times or 100 times magnification. In another embodiment, the one or more axial ultimate refractory angles on the obverse and reverse sides of the coin are rated on a numeric scale. In yet another embodiment, the numeric scale has a range selected from the group consisting of 1 to 4, 1 to 10 and 1 to 70. In another embodiment, the method further comprises determining an overall axial ultimate refractory angle rating for the coin based on the numeric rating of the one or more axial ultimate refractory angles for the obverse and reverse sides of the coin. In yet another embodiment, the overall axial ultimate refractory angle rating determined for the coin is rated as below average, average or above average. In another embodiment, the overall axial ultimate refractory angle rating determined for the coin is labeled on an appropriate holder of the coin.

The eye appeal of a coin is critical to its value, yet there is currently no way to objectively and consistently quantify a coin's eye appeal or transparently communicate its eye appeal to collectors and dealers. The methods of the invention do just that, providing a mechanism to not only determine the eye appeal of a coin, but also label the holder of the coin with the eye appeal determined. Further, the use of AURA allows the certification services to coordinate and re-grade every single coin they have ever graded, resulting in resurgence of re-slabbing and, as a result, an overhaul of a fractured system. In addition, by re-evaluating the eye appeal of many coins at regular intervals of time, certification services can more easily identify sources of tampered coins, decreasing their liability and insurance costs. In all, the formal assessment and display of the eye appeal of coins adds a crucial aspect to their evaluation and leads to the rewarding of coins having high eye appeal with increased value in the marketplace.

Definitions

As used herein, "coin" is intended to include a piece of metal (e.g., copper, nickel, silver or combinations thereof or alloys) shaped on its surface(s) by being squeezed between two dies. In particular, the metal can be stamped and issued by the authority of a government for use as money or as a collectable. This definition is intended to include medals, tokens, patterns errors and other related conventional uses of the term. Depending on the software program and biometric devices used, the inventor further contemplates the definition to include bullion, jewelry, paper collectables, and antiques.

As used herein, "eye appeal" refers to the overall appearance and/or aesthetic attractiveness/beauty of a coin with respect to toning, color, balance, freshness, marks/blemishes, strike, luster, planchet condition and surface preservation on both the obverse, reverse and sides of a coin, or any angle thereof. For instance, a coin having high eye appeal generally has vibrant/intense color, excellent toning and/or superior luster. Eye appeal may also refer to level of device/field cameo contrast or proof-like mirror finishes relating to certain coins, or a combination of any of the above (e.g. color and contrast).

As used herein, "appropriately knowledgeable numismatist" or "appropriately knowledgeable graders" is intended to include one or more coin grading professionals (e.g., certification company numistmatists), coin experts, coin graders, or other coin professionals who have, over time, gained significant experience in evaluating and grading coins, including coins of a particular type or series.

As used herein, "Axial Ultimate Refractory Angle" (AURA) is intended to include systems, methods, experienced reviewers, tools and other items that allow a qualitative visualizing, assessing, reviewing, recording of the eye appeal of a coin (see, e.g., Scott A. Travers and John W. Dannreuther, *The Official Guide to Coin Grading and Counterfeit Detection*, New York: House of Collectibles, Second Edition, 1997; incorporated herein by reference). This definition includes, but is not necessarily limited to, the recordation of the assessment in a tangible qualitative or quantitative manner. Included in this definition is the use of computer hardware and software to assist in the grading assessment. For one example contemplated by the present invention, the reader is directed to U.S. Pat. No. 4,899,392 by Henry Merton, issued Feb. 6, 1990, and to be herein incorporated by reference in its entirety. Furthermore, a common commercial off-the-rack software program like Adobe Photoshop® which can be loaded on any conventional computer system, and employed for the coin comparison component, is also contemplated. One of skill in the art can easily adapt this software method, and use for the comparison for same or multi-coin coin surface comparisons, including the obverse, reverse and the edges of the coins.

As used herein, an "overall axial ultimate refractory angle rating" refers to the overall AURA rating given to a coin based on the individual AURA determined for the obverse side and the reverse side of the coin. The calculation of the overall AURA of a coin will depend on the type, condition and technical grade of the coin. The AURA calculation can be balanced, or weighted to allow a particular face (e.g., obverse, reverse) to have more influence in the overall AURA rating.

As used herein, "axial" is intended to include the manipulation/movement of a coin upon its rotation/tilt in space relative to a three-dimensional orthogonal axis (e.g., x-y-z axis).

As used herein, an "ultimate" angle(s) is intended to include the best angle(s) or 'sweet spot(s)' at which to view a particular coin. That is, when a coin is rotated or tilted to an ultimate angle, it displays its greatest eye appeal based on characteristics of eye appeal specific to the type of coin.

As used herein, "refractory" is intended to refer to the ability of the metal of a slabbed or unslabbed coin to act as millions of reflective 'micro mirrors' and abundantly reflect light, thereby making the coin aesthetically pleasing and may be read and recorded as an image by a reflector, light collection device, or image recording device, coupled with a computer source. Any lighting or multi-lighting system as understood by one of skill in the art may be employed.

One of skill in the art readily understands that a commercial image recording device may record images in at least one (or perhaps both) of the infrared (IR) spectrum or the ultraviolet (UV) spectrum.

As used herein, the "angle" of a coin is intended to include the location of the coin in any x-y-z position and/or plane in three-dimensional space in order to determine the ultimate or best view of the coin. There can be one or several such angles at which the coin has an appealing view.

As used herein, "determining" the eye appeal of a coin refers to analysis of the overall appearance of the coin and is meant to include, as applicable to a particular type of coin, assessment of a combination of a coin's characteristics (e.g., luster, strike, toning, color, marks, planchet, and preservation). The "determined eye appeal" or AURA rating of a coin refers to the quantitative numeric (e.g., grade, AURA) or

qualitative designation assigned to a coin by one or more appropriately knowledgeable graders that has assessed the eye appeal of the coin. The grader may be on-site or off-site. The grader may be an employee of a grading service or a subcontractor contacted to share their experience regarding the eye appeal of the particular coin. The grading may be accomplished by one solo grader on a consensus of 1000 or more graders, as in a case of the vote on the eye appeal of the particular coin in question. In another embodiment, the grader may be a software program or other computer mechanical means used to discern various elements of the coin grade or eye appeal. The grader, in other circumstances, may be a combination of human and machine working in conjunction a manner by which to properly determined the axial ultimate refractory angle of the coin, labeling on a holder of such coin in a manner such that said axial ultimate refractory angle rating of said coin is displayed to a viewer of said holder, and, over an interval of time, assuring that the maintaining or recording of the eye appeal of the coin is facilitated or monitored. For example, one skilled will recognize that other imaging devices, programs, lighting, or techniques may be employed. For example, a particular application of coin imaging devices may not need to use the entire visible spectrum or all coin angles to determine the AURA. In certain applications, using infra-red, ultraviolet or light scattering imaging methods may be more useful to identify a specific aspect of a unique coin signature or specific area. Computer algorithm known in the art may be used to reduce the imaging data into a single identification computer file. The file may then be stored in any appropriate database.

As used herein, "holding" the coin is intended to include the grasping (gripping, clasping, touching) of the coin itself or a coin in a holder (container, encasement, setting, protector) by one of skill in the art using his or her hand(s). It is also intended to encompass location of the coin on/in an object or device (e.g., table, microscope, and machine) that allows manipulation of the coin such that characteristics of the coin can be identified and evaluated by the skilled artisan.

As used herein, "evaluating" a coin "by eye" is intended to include the ability of a skilled artisan to look at a coin and assess the characteristics of the coin with no more than his or her own corrected (e.g., with glasses, contacts) or uncorrected vision, that is, without any additional magnification. This evaluation is intended to comprise computer assessment or assistance or storage methods, as well.

As used herein, "visualizing under appropriate illumination" is intended to include the ability of one of skill in the art to see or view a coin under a source of light that enables him or her to adequately or best evaluate the axial ultimate refractory angle(s) of the coin.

As used herein, "appropriate magnification" is intended to include visualization of a coin by a skilled artisan using a device, tool (e.g., a loop) or piece of equipment (e.g., a microscope) that magnifies the view of the coin to a level such that the characteristics important to a particular type or series of coin can be identified. For example, the 1879 Proof Flowing Hair Stella or four-dollar obverse view has parallel hairlines horizontally across the face due to roller marks, a definitive characteristic of that type of coin that enhances its eye appeal and value. The coin has to be viewed under appropriate magnification (e.g., 5× magnifications) in order to see and possibly identify these unique marks. Further, using mechanical optical instruments, like a laser or other light refraction and recording source, AURA readings from a plurality of optically detected points on the coin may be obtained and processed into a unique value to produce a unique AURA identifier for a coin. That unique AURA identifier can be loaded and used via a searchable computer database, and retrieved and compared with other image identifiers as desired.

As used herein, an "appropriate holder" is intended to include any holder of a coin and a slab that encapsulates a coin in such a way as to prevent tampering and environmental damage and that can display information about the coin (e.g., grade), generally on a label embedded in the interior or also quantified using exterior labeling in addition to labeling on the interior of the holder. The encasement is typically, but not limited to, a clear, sonically welded plastic of rectangular shape.

As used herein "labeling" a coin is intended to include indicating at some place on or with a coin holder, including: anywhere on the outside or inside of the holder itself (e.g., the front, back or sides of an encasement), on any interior or exterior materials given or stored in conjunction with the coin and holder (e.g., internal/external paper/plastic coin display/support) or on an interior label of the coin holder, information about the coin (e.g., technical grade, AURA rating, coin type, coin date, serial number, hologram, date slabbed). The manner of labeling is intended to include placing another material (e.g., a sticker), characters (e.g., alphanumeric, roman, Arabic, Chinese, etc.), symbols (e.g., QWERTY symbols [i.e. typewriter or computed keyboard symbols] text, pictures, art) and colors at any place on/inside of a coin holder (so long as view of the coin itself is not obscured). This includes labeling that is embedded in or part of the coin holder itself (e.g., a colored or etched coin holder or alpha-numeric or symbolistic grade). As used herein, the "label" is intended to include any section on the outside of a coin holder or any material embedded, attached or placed with the exterior of a coin holder or used in conjunction with the coin and holder which has any color, hue or shade on the section or material or other written, visual or other sensory information that indicates/conveys information about the coin (e.g., AURA rating or coin description). The label may include other information regarding the grade, condition or eye appeal, pedigree, price, or history of the coin. Also contemplated are labels that are computer and bar coded, and contain any information related to the coin that may be relevant to the coin's value, condition or history. This barcode may be linked to the database which can be searched to confirm the date on which the referenced coin was graded and whether it is the same identical coin presently being re-graded, and whether the coin has been fraudulently altered (doctored) in some way.

As used herein, "color-coded label" is intended to include any section on the inside or outside of a coin holder or any material embedded, attached or placed on the interior or exterior of a coin holder or used in conjunction with the coin and holder which has any color, hue or shade on the section or material or other written, visual or other sensory information that indicates/conveys information about the coin (e.g., AURA rating). The color or other information can cover uniformly, cover some portion of, or be interspersed among other colors, spaces or openings on the label/section.

As used herein, "coin doctoring" or "coin tampering" as understood by those of skill in the art, refers to the alteration of the metal of a coin, other than to remove a light topical coating, in order to enhance the coin's appearance and increase its value. Simple dipping to remove, for example, a light covering of grime or PVC (polyvinyl chloride) on a coin's surface, is not coin doctoring. Generally, the intent of coin doctoring is to mislead others and perpetrate a fraud to increase a coin's grade and/or value and obtain a high/higher price for the coin. Coin doctoring can include, for example, among other things, adding substances to coins (e.g., color, smoke, grease, putty, wax, facial oils, petroleum jelly or var-

nish); treating coins with chemicals (e.g., potash, sulfur, cyanide, iodine or bleach); heat treating coins in any way to alter their appearance; re-matting and/or "skinning" proof gold; "tapping" and "spooning" (i.e., physically moving surface metal to hide marks); filing rim nicks; or repairing coins (re-tooling metal).

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1**A and FIG. **1**B are drawings that illustrate embodiments of the front (FIG. **1**A) and back (FIG. **1**B) sides of a coin holder that may contain a graded coin within which is clearly displayed, along with a recordation and display of other relevant information, including, for example, in FIG. **1**A, an AURA rating (**25**) for a particular coin located within coin holder **10** in FIG. **1**A. The AURA rating may be indicated by recording the AURA rating (**25**) in FIG. **1**A on the front label (**20***a*), and employing an appropriate AURA rating designator. One non-limiting exemplary embodiment of an appropriate AURA rating designator is that of a QWERTY plus ("+") symbol which indicates an above-average designation for the condition of a particular associated coin located within holder (**10**).

FIG. **2**A through FIG. **2**F are drawings which further illustrate contemplated embodiments of the front and back labels of coin holders (**10**) that are contemplated to contain various QWERTY or other colored symbols, and/or color-coded interior labels, as displayed through stippled patterns in FIG. **2**A (**51**), FIG. **2**C (**53**), and FIG. **2**E (**55**), which may indicate/convey and display an AURA rating designation or other pertinent description and/or information relating to the coin inside the holder (**10**), such as a coin description, and/or any other information regarding the grade, condition, eye appeal, pedigree, price, and/or history of the coin within the display holder (**10**). For exemplary purposes, the labels (**51**, **53**, **55**) may use color, coding and/or other color symbols in conjunction to indicate the AURA rating or coin, description, and/or any other information regarding the grade, condition, eye appeal, pedigree, price, and/or history of the coin within the display holder (**10**). FIG. **2**A depicts a front view of the holder label (**51**), and FIG. **2**B, depicts a back view of the holder label (**51**), and may indicate/convey and display an above-average coin. FIG. **2**A, for example of one embodiment, indicates to the viewer by using a color-coded label (**51**) with blue shading (as stippled in the FIG. **2**A (**51**)) printed on the internal clear display holder (**10**) that the coin inside of holder (**10**) has been imaged during the grading process and said image file has been stored for future comparative purposes, and further uses a QWERTY, symbol on the same label (**51**) (in this case, a plus "+" symbol as the indicator) to further indicate the coin's above-average condition as relating to the partial eye appeal of the coin (the label in practice may further comprise and use other symbols to convey other information)—the color coding and symbols are contemplated to be used in conjunction, and not limited in what information they may convey; FIG. **2**C depicts the front view of the holder label (**53**), and FIG. **2**D depicts the back view of the holder label (**53**), and in this embodiment may indicate/convey and display an average coin, for example (as indicated in this example with off-white/silver label shading, seen here as stippled in FIG. **2**C (**53**)), and/or no QWERTY symbol in this embodiment to indicate the coin's average condition and/or other information). FIG. **2**E depicts the front view of the holder label (**55**), and in this embodiment, further uses a QWERTY symbol on the same label (**55**) (in this case, a plus "−" symbol) to indicate a below-average coin based on the partial eye appeal of the coin, and FIG. **2**F depicts the back view of the holder label (**55**), and in this embodiment may indicate/convey and display a below-average coin (that may here for example be indicated with red label shading—as stippled in FIG. **2**E (**55**) and/or a QWERTY symbol recorded on or within the label to indicate that coin's below-average condition and/or other information about the coin, such as coin description, and/or any other information regarding the grade, condition, eye appeal, pedigree, price, and/or history of the coin within the display holder (**10**).

FIG. **3**A and FIG. **3**B are multiple perspective drawings that graphically exemplify embodiments of an alternative coin holder, which allows for the presentation of a graded coin, a photograph of that coin, comparative photographs, and may also include identifying coin barcode information, computer files relating to such coin, the coin's grade, related and known transactions, any AURA rating designator related to the coin, and alternative additional space being employed in which relevant attributes of the graded coin may be further described (i.e. pedigree, historical data, market conditions, insurance information, value of the coin as a securitizable asset, present owner or holder, etc.

DETAILED DESCRIPTION OF THE INVENTION

The present invention generally relates to methods for objectively assessing the eye appeal of a coin by determining one or more axial ultimate refractory angles (AURAs) of a coin and labeling a holder of said coin such a way that its AURA representation is displayed (via number, color or in other ways contemplated herein). Accordingly, coin collectors can re-submit already slabbed coin to a certification company (e.g., PCGS, NGC, ANACS) for re-grading of the coin for eye appeal, ultimately adding clarity and facilitating sight-unseen transactions in the coin market and value to numerous coins.

The evaluation of the eye appeal and axial refractory angle of a coin is performed by appropriately knowledgeable numistmatists (e.g., coin grading professionals). A manner by which these graders can determine the axial ultimate refractory angle of the coin involves numerous techniques (e.g., by eye/hand, by machine), variables (e.g., light source, magnification) and approaches, (e.g., split grading, technical grading, market grading) that are well-known in the art (see, e.g., Scott A. Travers and John W. Dannreuther, *The Official Guide to Coin Grading and Counterfeit Detection*, New York: House of Collectibles, Second Edition, 1997). The appropriately knowledgeable graders are experienced coin graders, typically, but not always working at certification companies, with extensive understanding and judgment of coin appearance in general and, in many cases, expertise on specific types or series of coins, in particular. Graders or those of skill in the relevant arts may also use, in whole or in part, computer programs or machine systems to facilitate evaluation.

The graders are used in a manner such that the axial ultimate refractory angle is properly determined. Thus, using any approaches and/or techniques known in the art as discussed above, appropriately knowledgeable graders are able to determine the Axial Ultimate Refractory Angle or, AURA, of a coin. The AURA of a coin relates to the concept that all coins have an inherent level of surface reflectivity and/or reflective capacity, and that each coin has a special angle at which it can be viewed that exhibits the maximum effect of this reflectivity. The best AURA(s) allows for the best or better viewing of the color, toning, diagnostics, damage, perfection and other important aspects of the coin (e.g., strike, luster, planchet). The skilled artisan can view the coin under a light source (e.g., lamp, overhead light) that allows for appropriate illumination

(e.g., a 60 watt incandescent bulb) of the coin through its reflection of the light source, such that a grader can thoroughly evaluate the characteristics of the coin by eye. Specifically, a grader can determine a coin's AURA by holding the coin (or its holder) in his or her hand and axially tilting (e.g., rotating, moving, swiveling, turning) each side (obverse, reverse) of the coin to many angles in space and, by simply looking at the coin at each of these angles, determine the best viewing angle(s) for each side of the coin. Accordingly, the skill, experience and eye of the appropriately knowledgeable graders are essential to identifying the AURA of a coin; there is currently nothing as effective as the skilled human eye. In addition to evaluating the coin by eye, the graders can also inspect the coin more closely by viewing the coin with a device (e.g., microscope) or tool (e.g., hand-held loop) that magnifies the details of the coin. Any magnification (e.g., 5×, 10×, 100×, 250×, 500×) can be used to view a coin; however, the crucial aspect to selecting the appropriate magnification is that the magnification be high enough to identify defining details that characterize a particular type of coin and/or type of metal comprising the coin.

The best viewing angle(s) of a coin depends on what aspect of the coin one is looking to find, and this aspect is often influenced by the type of metal(s) the coin is composed of. For instance, in copper coins, one generally looks at the planchet, strike, luster and color; in nickel coins, the luster, toning, strike, planchet and marks; in silver coins the marks/hairlines, luster, toning and strike and in gold coins, the marks/hairlines and intensity of color. Indeed, there are some coins that have their best AURA when viewed straight on (e.g., Brilliant coins). Although the AURA method works for any coin, it is easily demonstrated by a Matte Proof Lincoln Cent (MPL), for example. Hence, a MPL is a regular-looking coin when viewed straight on (e.g., parallel to the viewer's field of vision); however, when turned/tilted 45 degrees in a given direction, it can exhibit extraordinary color and luster. Thus, the MPL would have an AURA at 45 degrees. There can be one AURA, or several AURAs for a particular coin and its AURA can be assessed on both the obverse and reverse sides of the coin.

After determining the AURA(s) for a coin, the graders can assign a particular AURA rating accordingly. This rating can be quantitative, based on, for example, a numeric scale, or the rating can be qualitative, based on descriptors associated with distinct levels of eye appeal. A numeric scale can be a range of any numbers deemed appropriate by one of skill in the art, including, for example, scales from: 1 to 70 (like the Sheldon Scale), with the lowest eye appeal coin at AURA 1 and the highest eye appeal coin at AURA 70; however, any range of numbers can be used (e.g., 1 to 4, 1 to 8, 1 to 15, etc.). A grader can determine an AURA rating for an entire coin simply by evaluating the AURA(s) of the obverse and reverse of the coin and assigning an overall AURA rating to the coin. Alternatively, a grader can determine separate or 'split' AURA ratings for the obverse and reverse of the coin, then combine those two ratings in a manner that results in an overall AURA rating for the coin (e.g., using a balanced average or a weighted average). For example, the AURA rating for the obverse of a coin can, for instance, account for one-third of the overall AURA rating, while the AURA rating for the reverse of the coin can account for the remaining two-thirds. The determination of whether a split AURA rating for a coin is warranted is dependent on the particular coin and/or its condition and is a decision best made by the skilled grader on a case-case basis. Further, the calculation of an overall AURA rating for a coin will also vary from coin to coin and the determination of how best to calculate an overall AURA rating is also best left to one of skill in the art.

Alternatively, or in addition, the AURA of a coin can be described by different qualitative designations like, for instance, below average, average or above average. The aforementioned terms that can be used to describe a coin's AURA are well understood in the art, with the skilled artisan well able to identify coins that, based on their AURA(s), fall into those categories. One of skill in the art can also create other and/or additional descriptive terms appropriate to describe the AURA of a coin. A numeric scale can be used within each of the descriptive designations for further clarification of a coin's eye appeal. For instance, coins that fall into the 'below average' category can be given an AURA rating from, e.g., 1 to 70, as can coins that fall into the 'average' and 'above average' categories.

Once the AURA of a coin has been determined and the coin has been given an AURA rating (numeric and/or descriptive), an appropriate holder of the coin can be labeled in a manner such that the AURA rating of the coin is displayed to anyone that views the coin. There are numerous ways in which the AURA rating of a coin can be displayed on the coin holder. For instance, if the AURA rating is conveyed via a numeric scale, this can be displayed on a coin holder as shown in FIG. **1**. In FIG. **1**, coin holder **10** has a front face **15***a* in which interior embedded front label **20**A is displayed. Printed on embedded label **20**A, is certification company name **21** (e.g., PCGS, NGC, ANACS), coin year **22** (e.g., 1912), coin denomination **23** (e.g., 1 cent (1 C), 5 cents (5 C), 10 cents (10 C), etc.), technical grade **24** (e.g., Mint State-64 (MS64)) and AURA rating **25** (e.g., AURA 3, AURA 66). Coin diameter **30** has a differential space **33** that is able to secure any size coin in the holder, displaying obverse view **35***a* of the coin on front face **15**A of holder **10**. Turning to back face **15**B of coin holder **10**, interior embedded label **20**B displays certification company-specific hologram **27** and date of slabbing or re-slabbing **28** after the coin has been evaluated for its AURA. Alternatively, a descriptive AURA rating that is assigned to a coin can be delineated by different color interior labels that are in the coin holder. For instance, a coin that has an above average eye appeal rating can have an interior label of a particular color that indicates the rating, while a coin with a below average eye appeal rating can have an interior label of a different color that indicates that rating. A certification company may use any number of colors, hues or shades to represent different AURA ratings. Along these lines, the present invention further contemplates digitally assigning colors (e.g. RD, RB, BN) and relating the specific colors to numbers corresponding to the pixels relating to the color image of a subject coin image, and then utilizing computer programming knowledge in the arts to 'read' the color image and calculate the color and percentage of color coverage for the entire coin surface and thereafter assign an official color designation to the subject coin. Furthermore, from the recordation of that data, future images of the same coin can be made and compared to indicate whether the subject coin is changing colors in the holder.

In FIG. **2**A, blue interior label **51** indicates that the coin within coin holder (**10**) may have an above average eye appeal within the grade, and appropriately labeled to convey this above-average condition, while in FIG. **2**C, silver interior label **53** indicates that this same coin type that may have an average eye appeal within the grade, and in FIG. **2**E, red interior label **55** indicates that this same coin type may have below average eye appeal within its grade. Note that the stippling keys under FIGS. **2**A, **2**C and **2**E are displayed using different and appropriate stippling patterns, which indicate

different colors, or possibly symbols'to indicate any varying level of coin condition. The embodiments taught within FIGS. **2**A, **2**C and **2**E are exemplary only. It is contemplated that each embodiment may or may not be used in conjunction with any other. For example, the addition of a QWERTY symbol ("+") sign on interior label **51** in FIG. **2**A to indicate an above average coin specimen may be used without the accompanying, and opposite, QWERTY minus ("−") symbol on interior label **55** in FIG. **2**E which might indicate a below average coin. The embodiments taught in FIGS. **2**A, **2**C or **2**E are intended to be discrete, and one of skill in the relevant art would understand that the particular condition designators, like numbers, symbols or colors, may be assorted, used and displayed in innumerable ways, and may stand on their own as specific designators of coin condition.

In addition to displaying the determined AURA rating on a coin's holder, this alternative holder embodiment allows the AURA rating to be displayed in conjunction with other relevant data or information about the coin. The data or information may be recorded on this coin holder embodiment, and coupled with a photo image or computer file of that coin. This alternative holder embodiment may be prepared by the grading company. FIG. **3** exemplifies such an embodiment. Alternative holder **70** can be viewed with certification company name **4** and a photograph of the coin's obverse **80**A and coin reverse **80**B views. Alternative holder **70** has a foldable lower flap separated by perforation from the top portion of the alternative holder **70**, which may have a label **85** containing serial barcode **26** and hologram **27** (as shown also on coin holder **10** in FIG. **1**A and **1**B), and notation area **90**, which can display many types of information, including but not limited to the coin's technical grade, AURA rating, particularly attractive eye appeal angles, or any other interesting or distinguishing characteristics of the coin. The coin's photograph may be sent from the grading company back to the coin submitter as a separate product apart from the actual slabbed coin, or the slabbed coin may be attached within the alternative holder **70**, this time with the alternative holder **70** serving as a secondary holder, which would allow the graded coin to be inserted within, and along with all of the pertinent information relating to coin, and be transported together with the coin. Alternative holder **70** embodiment is contemplated by the inventor as an aid to storage or display, as well as allowing the coin owner to insure his graded coin based on not only the coin, but valuable external information related to the coin.

Pedigree and AURA rating would be non-limiting examples of external information embodiments which may increase the value of the coin. The alternative holder **70** embodiment might allow for efficient sight-unseen trading, and further allow the product to be sold and or traded much like a stock or other valuable certificate-based asset.

Documentation of a coin's appearance is important, as a coin's eye appeal can change over a period of time. This change can happen naturally due to the reactive nature of the metal the coins are composed of with elements in the coin's environment (e.g., corrosion, oxidation). Although some of these reactive changes to the coin are damaging (e.g., changes due to salt-water, PVC), the reaction process also accounts for many of the spectacular changes to original coins that give them high eye appeal (e.g., color, toning) and increased value. Since natural elements can eventually ruin a coin's appearance, certification companies have created coin holders (e.g., slabs) as a means to both display a coin and protect it from environmental damage.

However, the eye appeal of a coin can also change unnaturally and/or artificially. It is understood by those in the art that these unnatural changes to a coin's appearance are typically the by-product of "coin doctoring", which is incentivized by the higher prices obtained for coins with outstanding eye appeal. There are numerous ways by which a coin can be doctored. For example, a coin doctor can chemically treat a coin to achieve artificial toning, for instance. Still, at some point, the chemical reaction needs to be stopped and, to accomplish this, certain chemical reaction neutralizing agents or 'stoppers' are often added. However, if the reaction is not stopped or the attempt to do so is not completely successful, a graded and slabbed coin, even while inside a sealed plastic holder, can continue to oxidize, destroying the coin's eye appeal and, most likely, ruining the coin and it's original value. The determination of AURA, though, can be used as part of a coin preservation safeguard system by certification companies. Thus, the preservation safeguard system involves an initial evaluation/re-evaluation of a coin for its AURA and securing of that AURA. After the evaluation and assignment of an AURA rating to the coin, a high-grade/quality digital photograph or video recording of the coin's obverse and reverse views can be taken and the images along with other pertinent information (e.g., identity of the coin's owner and/or submitter), maintained in an electronic database by one or more grading services. (e.g., any digital, optical, or other storage systems known in the art including hard drives and hard drive arrays, CD-ROM or DVD discs, intra-company or external computer networks, etc.) that allows subsequent searching and retrieval of the image. The inventor contemplates that a coin specimen may be imaged by techniques appreciated in the art, such as standard coin photography, laser imaging, computer imaging, biometrics, and even mechanical scanning, and the coin image may be stored by any of a number of adequate data database storage means known in the art, including any functional type of computer hard drives located internally, externally, on disk, on tape, and stored in in-house or remote image storage depositories or hard drives. The images can be retrieved for comparative or display purposes at any time. By 'comparative', the inventor intends to mean that one or more coin images, created in any one or more points in time, may be compared to one or more secondary images of that same coin specimen, imaged at another point in time. Alternatively, the invention also considers that one first coin image may be compared to an image of a second coin, or even more. The "CP16 CoinAnalyzer" (purchased from CoinSecure, Inc., of Mountain View, Calif.) is one example of a preferred device that may be used to scan and image a coin's surfaces and secure the surface characteristics of that coin in an electronic database for future temporal retrieval and analysis, and may serve as one or more steps in the manner by which determining and labeling the eye appeal of a coin may be effectuated.

Furthermore, as the eye appeal of a coin is determined and stored, the labeling of an eye appeal designation on a coin holder or container of such coin in a manner such that said eye appeal rating of that coin is displayed to a viewer of the coin in that container may be achieved in a number of different ways which can be understood by those of skill in the relevant arts. Some examples of optical-related technology are contemplated herein for use in present embodiment as elements and manners in which a coin may be imaged and stored for security-related purposes.

The coin is then slabbed/re-slabbed and returned to the owner/submitter. The crucial part of the preservation safeguard system relates to the continued re-evaluation of the coin's AURA over time adds a level of security. Although a coin can be re-evaluated at any time interval deemed appropriate by a certification company, doctored coins can degrade substantially in as little as a year; consequently, the evaluation

of a coin every one or two years, for example, can be appropriate. After the specified interval of time has passed, the coin is again submitted to the certification company that in turn re-evaluates and rates its AURA and photographs it once more. This process constitutes a 'check-up' on the coin that allows the certification company to ensure that the coin is maintaining its initial eye appeal and, by extension, has not been doctored.

Coin owners benefit from a preservation safeguard system involving regular coin check-ups because it helps them document and demonstrate a coin's continued quality and value in the coin market and for insurance purposes. For certification companies, which not only grade a coin but also guarantee its authenticity, the preservation safeguard system represents an opportunity for them to keep track of the eye appeal of coins over time and potentially identify the source(s) (e.g., owners, submitters) of coins that, with consistency and/or regularity degrade or turn after slabbing, assumedly due to coin doctoring. Thus, with the likelihood of being caught increased several-fold through the use of the preservation safeguard system, many coin doctors will receive a disincentive from perpetrate coin tampering. Importantly, this AURA-based evaluation system may decrease coin doctoring activity, likely reducing the liability of coin certification companies, and thus significantly lowering the company's insurance costs.

Thus, the coin industry can benefit from many new embodiments of the present invention, including but not limited to periodic coin grading eye appeal 'checks' and AURA re-grades, judging eye appeal and offering AURA ratings after a coin has been in the holder for a certain period of time; coating coins with an inert substances upon slabbing to ensure that eye appeal remains unchanged, dating to time in which a certain AURA eye appeal rating is made. It is believed that the present invention in its many embodiment will thus be of great benefit to coin buyers and reputable dealers alike in that coin markets (like stocks or other tangible assets) change all the while, so a coin's eye appeal changing, from the dated time, is an excepted and calculated risk of buying, and can be monitored with more precision, as well as the industry wide effort to shut down the coin doctors (using the systems and related embodiments mentioned in this patent) can be achieved over time.

Thus, coins can be given a Sheldon scale grade, as it historically has been given, but with the addition of an AURA rating grade, as well, which the inventor believes will some of the guess work out of the present market grading predicament within the industry. The system quantifies, and by extension, qualifies coin value. This new AURA rating system will therefore foster a 'sight-unseen' coin purchasing transaction system that is more precise than the present grading and transaction systems, and allow the industry to move forward.

Those of skill in the art will realize that the present invention may be practiced for increased market certainty using various alternatives embodiments, including, but not limited to computerized grading, coin recognition software, fractional and two sided grades, counterfeit holder detectors, radio frequency identification chips, coin exchange markets (like commodities and stocks), acceptance of numismatic holding in 401Ks and other retirement plans, accurate insurance coverage for numismatic holdings (somewhat in line with the certainty strived for in other industries, including those involving precious gemstones and art).

What is claimed is:

1. A coin value preservation and safeguard holder display method adapted to increase coin grading precision within the conventional Sheldon coin grading standard and further safeguard the condition of an uncirculated coin through the introduction and display of one or more eye appeal-related information indicators, comprising: a) providing an uncirculated coin, said coin i) having been fractionally graded within one whole number in the numerical 60-70 range within the conventional Sheldon whole number scale; and ii) said coin having been further digitally imaged, whereby said digital coin image file is electronically stored in a database for future comparative assessment with a second digital coin image file of said coin created at a later date; b) including a standard clear plastic coin holder display device capable of displaying a coin label in proximity to said related uncirculated coin; and c) introducing and displaying said coin label, said label being internally-affixed within said coin holder display device and further capable of displaying at least one eye appeal-related information indicator associated with said uncirculated coin, whereas said at least one eye appeal-related information indicator comprises a plus ("+") symbol printed on said label defined within said display device, said + symbol adjoining the coin's Sheldon whole number grade on said label, and further being located on said label in proximity to said coin such that the indicator is openly displayed, said indicator further correlating to a precise above-average fractional grade condition of said coin.

2. A coin holder display method of claim **1**, wherein a first label indicator further comprises a plus ("+") symbol label indicator adjoining said Sheldon whole number labeled grade, said + symbol further being positioned and displayed to indicate that at least one characteristic of the graded coin was pre-determined to be in an above-average condition based partially on the eye appeal of that coin, and wherein a second label indicator further comprises a gold art symbol label indicator positioned on said label, wherein said gold indicator is capable of displaying to a viewer, and indicates that at least one electronic image file of the graded coin contained within the holder has been digitally recorded and maintained in a standard computer digital image file database that allows for future comparative assessment of said first electronic image file with a second electronic image file of the same coin at one or more points in time.

3. A method of claim **1** for displaying at least one visual indicator associated with an uncirculated coin by using a coin label situated within an appropriate holder, comprising visually including therewith, and arranged in a manner such that an eye appeal-related indicator associated with said coin comprises a QUERTY plus (+) symbol such as to indicate that said uncirculated coin's eye appeal condition is predetermined to be of above average quality within its Sheldon scale whole number grade, and the preservation safeguard-related indicator associated with said coin comprises a colored label such as to indicate that the uncirculated coin was imaged beforehand using a conventional digital image recording device, and that the imaged coin's digital file is stored in a computer database for future comparative purposes.

4. A coin value preservation and safeguard holder display of claim **1**, wherein said holder is capable of displaying one or more labeling indicators that are located in proximity to a graded coin contained within said holder, said holder comprising a graded coin and an internal grading label, said grading label including a first plus ("+") symbol grading indicator capable of displaying to the viewer that the graded coin has been graded using a fractional increment grading scale and found to have above-average eye appeal within the further displayed standard Sheldon scale whole number grade being displayed on the label, said above-average eye appeal condition being based on one or more characteristics of the graded coin, and said label further comprising a second col-

ored symbol label indicator capable of displaying to a viewer that at least one electronic image file of the graded coin displayed within the holder has been previously recorded and said file is as a first file maintained in a standard computer digital file database that allows for future comparative assessment of the first file to a second digital file.

5. A display method of claim **1** for indicating the above-average eye appeal-related quality and preservation safeguard information of an uncirculated coin, comprising visually including therewith, in a manner such to display said above-average quality eye appeal-related quality associated with said coin, a plus ("+") symbol indicating at least partially the above-average eye appeal-related quality of said coin, and a gold color label decal indicating the preservation safeguard information associated with said coin.

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(12) **EX PARTE REEXAMINATION CERTIFICATE** (10627th)

United States Patent
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(45) **Certificate Issued: Jun. 9, 2015**

(54) **AURA DEVICES AND METHODS FOR INCREASING RARE COIN VALUE**

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G07D 5/00 (2006.01)

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CPC ***G07D 5/00*** (2013.01)

(58) **Field of Classification Search**
None
See application file for complete search history.

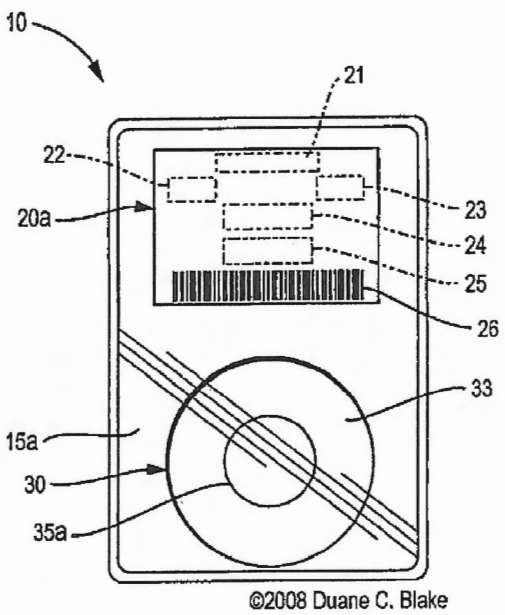
(56) **References Cited**

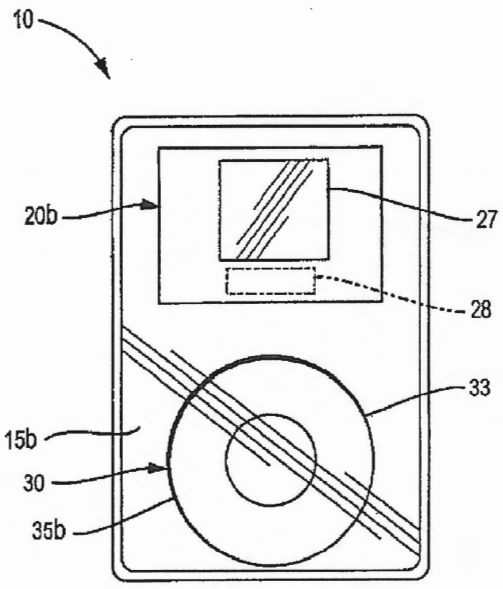
To view the complete listing of prior art documents cited during the proceeding for Reexamination Control Number 90/013,320, please refer to the USPTO's public Patent Application Information Retrieval (PAIR) system under the Display References tab.

Primary Examiner — Margaret Rubin

(57) **ABSTRACT**

The present invention relates to coin value safeguard devices and methods by determining and monitoring the eye appeal of a coin and labeling that eye appeal on an appropriate holder of the coin such that the eye appeal is displayed to a viewer of the holder, and that coin's value is thus increased. Appropriately knowledgeable graders assess a coin's eye appeal by determining the coin's axial ultimate refractory angle(s) (AURA) and assigning an AURA rating to the coin. The coin image is stored in a database where it may be compared to secondary temporal images of the coin as necessary to determine whether coin doctoring has been employed.





A2273

EX PARTE REEXAMINATION CERTIFICATE ISSUED UNDER 35 U.S.C. 307

NO AMENDMENTS HAVE BEEN MADE TO THE PATENT

AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT:

The patentability of claims **1-5** is confirmed.

* * * * *

A2274

CERTIFICATE OF COMPLIANCE
UNDER FEDERAL RULES OF APPELLATE PROCEDURE 32(a)(7) & FEDERAL CIRCUIT RULE 32

This brief has a proportionally spaced 14-point typeface, and contains no more than 14,000 words, based on the "Word Count" feature of Word 2003, including footnotes and endnotes. Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Federal Circuit Rule 32(b), this word count does not include the Certificate of Interest, Table of Contents, Table of Authorities, and Statement of Related Cases.

Respectfully submitted,

Dated: June 29, 2015

/s/ Duane C. Blake

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